

(Testimony of Edward G. Bradley.)

Q. How long have you been in Government employ? [578] A. Since May of 1934.

Q. Has your service been continuous since that date? A. It has.

Q. What was your assignment in the months of February and April, of 1951?

A. In February and April of 1951 I was chief of the Compliance Section, Surplus Property Utilization Division.

Q. In what agency?

A. In the department—in the Federal Security Agency.

Q. And the Federal Security Agency's functions were later assumed by the Department of Health, Education and Welfare, were they?

A. That is right.

Q. Did you have a meeting or a series of meetings with Mr. George Finn in the months of February, March or April, of 1951?

A. I had a series of meetings with Mr. Finn during the early part of April, in 1951.

Q. Do you recall the date of the first of such meetings?

A. I do not recall the exact date. My recollection is that it was in the early part of '51, the early part of April, 1951.

Q. Do you recall the place of that first meeting?

A. The meeting took place in my office. [579]

Q. Which is located where, sir?

A. Which is located in Washington, D. C., Fourth and C Street Southwest.

See vol. 2995

(Testimony of Edward G. Bradley.)

Q. Is that the Federal Security Building?

A. That was the Federal Security Agency Building.

Q. Was anyone else present at that first meeting besides yourself and Mr. George Finn?

A. No, sir.

Q. Will you state the substance of the conversation between Mr. Finn and yourself on that occasion?

A. Mr. Finn stated that he had been to the Civil Aeronautics Administration to register, to apply for registration for an aircraft, and he said that the C.A.A., or Civil Aeronautics Administration had referred him to the Federal Security Agency for a bill of sale which would remove the restrictions that applied on the aircraft that he had in mind. It was an aircraft that had been previously transferred by War Assets Administration for educational purposes.

Q. Did he identify that aircraft any further than in the manner you have just described?

A. Well, he showed me some pictures of an aircraft.

Mr. Abbott: May it please the court, in the course of defendant George Finn's testimony he stated he would undertake to supply the pictures in question if they were available; said he would bring them to court. May I inquire if they are [580] here?

Mr. George C. Finn: Did I say I would do that? Well, I certainly will if I can find them. I have

(Testimony of Edward G. Bradley.)

gone through a picture file, but not looking for these. But I went through one of our picture files. But I didn't see any pictures in there. But if I can find them, I will bring them.

Q. (By Mr. Abbott): Will you describe, generally, Mr. Bradley, what was portrayed by the pictures shown to you by Mr. Finn in that first conversation?

A. The pictures portrayed an airplane in very poor condition. As I recall it, there were no motors. The instrument panel had been stripped. And, oh, the tail was bent and it looked like—well the aircraft was in very bad shape.

Q. Now, just what did Mr. Finn say to you at the time that he showed you those pictures, relating to the pictures themselves?

A. Mr. Finn stated that he had purchased that aircraft from the Vineland School District and had given them some several hundred dollars worth of equipment and hand tools that the school could use; and that he intended to rehabilitate the plane and use it for flight purposes.

Q. Did Mr. Finn, in the course of that conversation or any other conversation with you, mention the purchase of any other aircraft by him from the Vineland Elementary School District? [581]

A. No, he did not.

Q. Did any other person in the course of those conversations make reference to any such purchase of another aircraft, other than the one displayed in the picture? A. No, sir, not that I know of.

(Testimony of Edward G. Bradley.)

Q. What else was said in the course of that first conversation, Mr. Bradley?

A. Since Mr. Finn wanted to get release of the restrictions in the use of the plane, I felt that I should tell him that the Federal Security Agency at that time had a very definite policy, that it would not release restrictions on any aircraft. That policy was dictated——

The Court: Is this what you told him?

The Witness: Sir?

The Court: Is that what you told Mr. Finn?

The Witness: Yes, sir. That policy was dictated——

The Court: I suggest you preface all your remarks by saying, "I told him."

The Witness: I told him that the policy came about as a result of an agreement between the Department of Defense and the State Department, whereby both of those departments requested the Federal Security Agency to enforce the scrap warranty on educational aircraft. The Department of Defense and the State Department felt that they did not want those planes to be flown and possibly get into the hands of a foreign [582] government whose interest would be hostile to this country.

I also told Mr. Finn that we had an agreement with the Department of Defense at that time, which was concluded sometime in January, whereby any aircraft, any educational aircraft which became either excess to a school's needs or unfit for their particular purpose would be referred to the Depart-

(Testimony of Edward G. Bradley.)

ment of Defense for recapture for use in the Korean War, and that under those circumstances the Federal Security Agency had developed a rather positive policy that it would not grant releases of restrictions, and that I had no authority whatsoever to change that policy.

Q. (By Mr. Abbott): Was anything else said in the course of that first meeting between yourself and Mr. Finn, Mr. Bradley?

A. Mr. Finn, during the course of that meeting, indicated that he would be willing to pay the Federal Government \$2,000 or \$3,000 if he could get a bill of sale. I told him that I could not consider the offer, that the policy laid down by the Administrator's office was hard and fast, and that I had no authority to proceed in the matter.

Q. Did that conclude the conversation, or was something else said?

A. Well, during the first meeting Mr. Finn said he would like to see the agreement form that the school signed. I got the file on the Vineland School and let him look at [583] the Form 65, which was the agreement that the school had signed.

Mr. Abbott: Mr. Clerk, will you please place before the witness Plaintiff's Exhibit 1.

Q. (By Mr. Abbott): Have you had an opportunity to examine Plaintiff's Exhibit 1, Mr. Bradley?

A. I examined this at the time that I had the discussion with Mr. Finn.

(Testimony of Edward G. Bradley.)

Q. Is Plaintiff's Exhibit 1 then the document which you showed to Mr. Finn on that occasion?

A. Yes, it is.

Q. Did you show him that document alone, or did you show that in connection with other papers?

A. Well, I pulled the file on the Vineland School District, and after Mr. Finn read this, then he asked me if he could look at the entire file. I stated I had no objection if he wanted to. And as I recall it there was an empty desk several feet away and I told him he could sit at the desk and look at the file as long as he wanted to, which he did. And I proceeded to go on with other work that I had there.

Q. Mr. Bradley, were you in court when the defendant Vineland showed the 16 mm. picture sound film which is defendant Vineland's Exhibit F?

A. Yes, sir, I was present when that moving picture was exhibited. [584]

Q. Did the aircraft portrayed in that moving picture appear to be the aircraft portrayed in the still photos that were displayed to you by Mr. Finn on the occasion of your first meeting?

A. No, sir. I would say there wouldn't be any resemblance to them. [585]

Q. Would you point out the dissimilarity? What differences were there between the two?

A. The pictures showed to me by Mr. Finn portrayed an aircraft in very bad condition. There were no motors; the instrument panel had been

(Testimony of Edward G. Bradley.)

scrapped, as I recall it. What was left of the plane was damaged, and it was an aircraft in very bad condition.

Q. Did you have a subsequent meeting with Mr. Finn after the meeting you last described?

A. Yes.

Q. How long after the first meeting did that second meeting occur?

A. Well, I would say that that probably took place in maybe two or three days. At that time——

Q. Before going ahead with a description of the meeting, was that meeting in the same place—your office in the Federal Security Agency?

A. Yes, sir.

Q. Was anyone else present?

A. No, there was not.

Q. All right. What was the substance of the conversation, as nearly as you can recall, on that occasion?

A. Well, the substance of that conversation was—in the previous meeting Mr. Finn indicated that he would like to [586] have a photostatic copy of the Form 65, and I told him that was all right, that he could have that if he wished, and in the subsequent meeting Mr. Finn started to discuss with me the conditions on the Form 65, and the conditions that appear in the War Assets Regulation 4.

He pointed out that there was a difference in the language between the War Assets Regulation 4 and the War Assets Form 65.

I readily agreed with Mr. Finn that there was a

(Testimony of Edward G. Bradley.)

difference in the language, and stated that the conditions appearing on the Form 65 appeared to be considerably tougher than they were in the War Assets Regulation 4.

He asked me if I knew why there was a difference. I told him, frankly, I did not know, that apparently the people who drew up the Form 65 decided to use the language that they did, and the form was drawn accordingly.

Q. Had you participated in the preparation of that form, sir? A. No, sir.

Q. How long had you been engaged in your position which you held at the time of your conferences with Mr. Finn?

A. I had been in that position since the early part of January, 1951.

Q. What else was said on the occasion of that second meeting? [587]

A. Mr. Finn took the position that the conditions stated in War Assets Regulation 4 were the governing conditions, and I pointed out to Mr. Finn that the school did not sign War Assets Regulation No. 4, but that it had signed the War Assets Form 65, and, therefore, I felt that the conditions stated in the Form 65 were the governing conditions.

Considerable conversation took place with respect to the difference in language, and again Mr. Finn took the position that he thought the conditions outlined in Regulation 4 were governing, and I took the opposite position. I took the position that the conditions in Form 65 were governing.

(Testimony of Edward G. Bradley.)

We discussed it at quite some length, and Mr. Finn inquired as to what he had—that if the conditions on the Form 65 had to be considered, then just what title did he have. And I stated that I did not know exactly what title he had. I told him that I wasn't a lawyer, and so I suggested that it might be well if we got some of the legal people in on this, since we were getting into a discussion of the legal points. And about that time, I don't know whether it was by mutual consent, or whether I suggested it or Mr. Finn, but we arranged the meeting between the legal representatives of the Federal Security Agency, and the people over at Civil Aeronautics Administration who were interested in the phase of the registration of the plane.

Q. Was there then a meeting, in fact, held pursuant [588] to that arrangement?

A. Yes, sir.

Q. How long after the second meeting with Mr. Finn did that meeting with the lawyers occur?

A. I think it was probably in a day or two. I am not quite sure just how many days intervened, but it was very closely after that.

Q. What persons were present at that third meeting, Mr. Bradley?

A. At that meeting Mr. Hiller and Mr. Davidson from the Office of the General Counsel in Federal Security Agency were present, Mr. Finn, of course, and Miss O'Neil and a Mr. Howard. Miss O'Neil, I believe, is in charge of registration of aircraft at Civil Aeronautics Administration. Mr.

(Testimony of Edward G. Bradley.)

Howard is an attorney or was an attorney at Civil Aeronautics Administration. And myself.

Q. Now, do you recall the conversation that occurred on that occasion?

A. I introduced the subject by stating Mr. Finn's purpose, which was to obtain a release of restrictions on the aircraft that he had purchased from the school district. Thereafter I took little part in that discussion, because most of the conversation was in the nature of a debate on the legal aspects of title, just what interest Mr. Finn had, what the interest of the United States was, and, as I say, not being a [589] lawyer, I did not actively—I did not participate in that discussion to any great extent.

Q. Did you follow the general tenor of that discussion, Mr. Bradley?

A. I did. And, Mr. Finn, as I recall it, again took the position that the conditions stated in Regulation 4 were the governing conditions. And I can recall Mr. Hiller and Mr. Davidson of the Federal Security Agency taking the opposite side. They insisted that the scrapping provisions in Form 65 was the governing factor.

That went on for quite some time, and at one point the attorney, Mr. Howard, ventured a personal opinion, as I recall it——

Q. Mr. Howard from what agency?

A. Mr. Howard was from the Civil Aeronautics Administration. He ventured a personal opinion that under the Civil Aeronautics Administration

(Testimony of Edward G. Bradley.)

rules and regulations that it was quite possible that Mr. Finn had enough interest to register the plane, but that this did not constitute proof of ownership, that the matter of ownership was a matter to be decided in a court of law; that if there was any dispute between Mr. Finn and the Government, or anyone who purchased an educational aircraft, that the registration did not confer absolute ownership on the individual.

Q. What was said thereafter by the several persons [590] present?

A. Well, on that point, as I recall it, the Federal Security Agency lawyers did not agree that there was a registerable interest, and they proceeded for some time, and, as I say, I did not participate in that discussion.

Q. Now, did the Federal Security Agency lawyers address their remarks to Mr. Finn, or to Mr. Howard, or to both of them?

A. Well, as I recall it, they were addressed to both, to Mr. Howard and to Mr. Finn.

Q. What else do you recall of that conversation, Mr. Bradley? A. I recall Mr. Hiller——

Q. Mr. Hiller being one of the lawyers at Federal Security Agency?

A. Mr. Hiller, being one of the Federal Security Agency lawyers, restated the policy that I had stated to Mr. Finn in previous meetings, that, regardless, we had no authority to go contrary to the policy that was established by the Office of the Administrator, that the Department of Defense and the

(Testimony of Edward G. Bradley.)

State Department had insisted that we insist upon the scrap warranty provisions. The Department of Defense because they considered any aircraft to be an implement of war; the State Department because it felt that the shipping of these planes to foreign countries might jeopardize their [591] foreign relations at that time.

I recall also that Mr. Hiller of the Federal Security Agency told Mr. Finn that we had no authority to release the restrictions, or give consent, that the only recourse that he had was to apply to the Office of the Administrator himself, or to the Administrator himself, that he would be the only one in the Federal Security Agency who could give him any relief in the matter.

The Court: During the course of this conversation you told Mr. Finn you were not a lawyer. Did he make any statement as to whether or not he was a lawyer?

The Witness: No, sir, he did not.

The Court: Did he say he was or was not?

The Witness: I don't believe that he made either a positive or a negative statement in that respect, sir.

Q. (By Mr. Abbott): Are you familiar with the delegations of authority within the Federal Security Agency, as they existed at the time of your conversations with Mr. Finn? A. Yes, sir.

Q. In particular, are you and were you then aware of the delegations of authority to perform the functions conferred upon the Administrator of

(Testimony of Edward G. Bradley.)

the Federal Security Agency by the Federal Property and Administrative Services Act of 1949?

A. Yes, sir. [592]

Q. —40 United States Code, Section 484(k) (2)(a), which relates, in general, to the power to modify or release restrictions imposed in instruments by which interests are conferred pursuant to the Surplus Property Act of 1944?

A. Yes, sir.

Q. What persons within the Federal Security Agency had been authorized to perform the functions described in the statute I have just mentioned?

A. The Administrator of the Federal Security Agency was authorized, and the Administrator delegated that authority to the Director of the Office of Field Services, and to the Chief of the Surplus Property Utilization Division.

Q. Were any one of those three persons present at any of your meetings with Mr. Finn?

A. No, sir.

Q. Has any one of those three persons, to your knowledge, taken any action whatsoever with respect to any aircraft in the possession of the Vineland Elementary School District prior to your meetings with Mr. Finn?

Well, let me simplify the question, sir. Has any one of those three persons you have described taken any action to release or modify restrictions existing with respect to aircraft in the possession of the Vineland Elementary School District?

A. No, sir. [593]

(Testimony of Edward G. Bradley.)

Mr. Blackman: Just a moment. To which we object as calling for a conclusion of this witness, and a matter not within his own personal knowledge. [594]

Mr. Abbott: It does, your Honor.

The Court: You so understand?

The Witness: Would you please repeat the question?

Mr. Abbott: Certainly.

Q. (By Mr. Abbott): To your knowledge, Mr. Bradley, has any one of the three people you have named as having authority to act under the described statute taken any action to modify or release restrictions existing with respect to aircraft in the possession of the Vineland Elementary School District?

A. Not to my knowledge; through, possibly, the middle of June, 1951.

Q. Why do you make that qualification?

A. About the middle of June, 1951, I transferred to another program. I left the surplus property program.

Q. Do you have any information that would indicate that after that date such action was taken by any one of the three named persons?

A. I have no such information.

Q. To your knowledge has the notice of the General Services Administrator required by the statute last cited ever been given?

A. Not to my knowledge, through, possibly, the middle of June, 1951.

(Testimony of Edward G. Bradley.)

Q. Well, in fact, to your knowledge has it occurred thereafter? [595]

A. It has not, to my knowledge.

Q. If such action by any one of the three authorized persons you have named, releasing or modifying restrictions on aircraft in the possession of the Vineland Elementary School District had occurred during the time when you were operating, holding the position of director of the compliance section, if such action had occurred during that period, would you have known of it? A. Yes.

Q. If a notice of the General Services Administrator, as required by the statute last cited, had been given, would you have known of it?

A. Yes, sir.

Q. Have you described everything that occurred at the third meeting attended by the several lawyers, Mr. Bradley?

A. I believe that that about sums it up.

Q. Did you have any further meeting with Mr. Finn?

A. About possibly two or three days after the meeting between the representatives of the Federal Security Agency and the Civil Aeronautics Administration and Mr. Finn, Mr. Finn came into the office and he again reiterated his position that the conditions on the—stated in War Assets Regulation 4 should govern, and that he felt that he had sufficient title to warrant registration of the plane, and that he actually had complete title to it. And I did not agree with [596] Mr. Finn. I again

(Testimony of Edward G. Bradley.)

stated that the school had signed the Form 65, and that we proposed, in view of the policy of the Agency, that we proposed to enforce the terms and conditions under which the school acquired the plane.

Mr. Finn then said that he was going to submit formal application to the Civil Aeronautics Administration for registration. He asked me what I thought of that, and what the Federal Security Agency would do. I told Mr. Finn that I had no objection if he submitted formal application, that he was perfectly free to do anything he pleased. And I told him at that time that I did not know exactly what action would be taken by the Federal Security Agency; that the matter was under study by the legal department and that I did not know exactly what action would be taken.

I did tell him that we, in view of the policy, that we would have to enforce the terms of the Form 65, but that what specific action would be taken, I did not know.

Q. Was anything else said in the course of that fourth meeting, Mr. Bradley?

A. I can't recall anything else. My recollection is that it was fairly brief.

Q. Have you had any conversations with Mr. Finn, with either Mr. Finn, at any other time that you have not described in your testimony today?

A. Not that I can recall, sir. [597]

(Testimony of Edward G. Bradley.)

Q. Have you corresponded with either of those gentlemen on any occasion? A. No, sir.

Q. Calling your attention to the meeting with the several lawyers, which I believe is the third meeting you had with Mr. Finn, did any representative of the Federal Security Agency on that occasion state, as Mr. Finn has testified, that they were not able to determine why the provisions of War Assets Form 65 did not coincide with War Assets Regulation 4?

A. Would you state that again, please?

Q. Yes. Did any of the people representing the Federal Security Agency say to Mr. Finn, in the course of the meeting which the lawyers attended, that they were unable to determine why the Form 65 agreement did not coincide with the Regulation 4? A. No, no one said that.

Q. Did anyone present at that meeting with the lawyers, which we have identified as the third meeting, state that if Mr. Finn were to apply to the Civil Aeronautics Administration for a certificate of registration that such action would be acceptable to the representatives of the Federal Security Agency? A. No, sir.

Q. Was there, in the course of any of your meetings with [598] Mr. Finn, any discussion whatsoever of a policy letter from the Federal Security Agency to the Civil Aeronautics Administration which provided, by Mr. Finn's testimony, in substance that the Civil Aeronautics Administration

(Testimony of Edward G. Bradley.)

would not register aircraft in the possession of schools?

A. I know of no discussion that was had on that policy letter.

Q. Was there, to your knowledge, at the time of your several meetings with Mr. Finn any such letter in existence?

A. I did not know of any if there was.

Q. In the course of any of your meetings with Mr. Finn was there any reference to a sales receipt document?

Mr. Abbott: In this connection, I will request that the clerk put International's Exhibit A before the witness.

Q. (By Mr. Abbott): Have you had a chance to review International's Exhibit A?

A. The sales receipt, is that correct?

Q. Oh, there are several documents which are collectively marked as International's Exhibit A. If you will look at the particular short document entitled "Sales Receipt," please. A. Yes, sir.

Q. Was that document before you and discussed in the course of your meetings with Mr. Finn?

A. No, sir, it was not.

Q. Was it in the file of the Vineland Elementary School [599] District?

A. It very possibly was. I did not closely examine the Vineland School file. In our discussions with Mr. Finn the point at issue was the Form 65. And I cannot state whether this sales document was in the Vineland School file.

(Testimony of Edward G. Bradley.)

Q. In the course of the third meeting, at which the lawyers were present, did Mr. Heller and Mr. Davidson, or either of them as Mr. Finn testified, state that the sales receipt form, International's Exhibit A, had all of the fundamental requirements of a bill of sale?

A. I cannot recall such a statement being made.

Q. Was there any discussion of that document, International's Exhibit A, whatsoever?

A. Not to my knowledge. The sales receipt was not discussed.

Q. In the course of any of your meetings with Mr. Finn, did he ever identify the aircraft under discussion by serial number?

A. No, sir, he did not.

Q. Did he ever say anything to identify the aircraft more particularly than in the manner you have already described? A. No, sir, he didn't.

Q. In the course of your last meeting with Mr. Finn, did you furnish to him any additional forms or papers which [600] you had not previously delivered to him? A. No, sir.

Mr. Abbott: Mr. Clerk, will you place Finn's Exhibit B before the witness, please?

Q. (By Mr. Abbott): Have you examined Finn's Exhibit B, sir? A. Yes, sir.

Q. Was that document discussed in the course of your last meeting with Mr. Finn?

A. No, sir, it was not.

Q. Was it discussed in the course of any meeting with Mr. Finn?

(Testimony of Edward G. Bradley.)

A. I cannot recall that we had any discussion on a Form 35.

Q. By "Form 35" do you mean Finn's Exhibit B? A. I mean this exhibit.

Q. Did you, in the course of that last meeting with Mr. Finn, state to him, as he has testified, that some of the provisions in the Form 65 agreement appeared there through administrative error?

A. No, sir, I did not say that.

Q. Did you make any statement in substance or effect that administrative error had caused the Form 65 to be prepared in its existing form?

A. No, sir. [601]

Q. Was such a statement made by you in the course of any of your other meetings with Mr. Finn? A. No, sir.

Q. Was the possibility of an administrative error with respect to the preparation of Form 65 ever discussed in any of those meetings?

A. No, sir.

Q. Did you state to Mr. Finn, in the course of any of those meetings, as he has testified, that he could rehabilitate and put into flight service the airplane depicted in the photographs which he showed to you? A. I think not.

Q. Did you ever state to Mr. Finn, as he has testified, that an aircraft transferred under War Assets Administration Form 65, Plaintiff's Exhibit 1, could be scrapped within the meaning of Regulation 4 at the time it was actually sold by the Gov-

(Testimony of Edward G. Bradley.)

ernment, and still within the meaning of those regulations be rehabilitated for flight?

A. I did not.

Q. In the course of your last meeting with Mr. Finn, did he tell you that the Civil Aeronautics Administration would register the airplane because they had agreed there was no condition subsequent, and that title had passed and would not revert, as he has testified? A. No, sir. [602]

Q. Was anything in substance or effect amounting to that, in thought, said?

A. No, sir. At the last meeting of Mr. Finn, he said he was going to submit formal application to C.A.A.—to the Civil Aeronautics Administration.

Q. What did you say to that?

A. I said that he had a perfect right to do so if he wished.

Mr. Abbott: No further questions, your Honor.

Cross-Examination

By Mr. Blackman:

Q. Mr. Bradley, did Mr. Finn say how he found his way into your office?

A. He said he had been referred to my office by the people at the Civil Aeronautics Administration.

Q. Do you know any of those people over there?

A. Prior to the—Mr. Finn coming in, I don't believe I did. I had had very little contact with him.

Q. So, did your official duty require you to do anything with respect to surplus aircraft?

(Testimony of Edward G. Bradley.)

A. At that time, yes.

Q. Well, in what connection?

A. Well, from time to time representatives of airlines or aircraft buyers would come in and ask if the Federal [603] Security Agency would release restrictions on educational aircraft, and I told them no. I stated the policy to them the same as I had stated it to Mr. Finn. And in each instance that I know of, there was no subsequent action on their part.

Q. Do you mean, sir, when an inquiry came into the Federal Security Agency as to whether or not that agency would release any claimed restrictions on the resale of aircraft, that the inquiry was directed to you? A. Substantially so, yes.

Q. And to your knowledge that is how the Finns found their way into your office, is that right?

A. That is——

Q. Now—oh, pardon me.

The Witness: Would you state that again?

Q. (By Mr. Blackman): To your knowledge, that is how the Finns found their way into your office? In other words, they had a similar problem which they wanted to discuss with you?

A. That is correct.

Q. And the very first time that you discussed the matter with Mr. Finn he told you that he had purchased an aircraft from the Vineland School District? A. Yes.

Q. And that he wanted to fly it? [604]

A. Yes, sir.

(Testimony of Edward G. Bradley.)

Q. Who brought up the question of restrictions, you or him?

A. Mr. Finn stated that the C.A.A. said he would have to have a bill of sale from the Federal Security Agency, which would release the restrictions contained in the agreement the school signed when it acquired the aircraft, and that without that they would not register the plane.

Q. Were you aware of a Form 65 agreement that had been executed by the School District in connection with the airplane in suit?

Mr. Abbott: We object to the form of that question. The Form 65 agreement is not an instrument which relates to any particular property. It is all encompassing in its terms.

Mr. Blackman: If it includes the particular property I think the question is proper.

Mr. Abbott: The particular property had never been selected or delivered at the time of the execution of the Form 65 agreement, your Honor.

Mr. Blackman: I don't understand the basis of the objection. The Form 65 agreement, it is claimed now, relates to the particular property in suit. That is the only purpose of my question, was he aware of that agreement at the time the Finns first spoke to him.

The Court: Aware of the existence of it? [605]

Mr. Blackman: Yes.

The Court: Overruled. You may answer.

The Witness: Yes.

Q. (By Mr. Blackman): When did you first

(Testimony of Edward G. Bradley.)

become aware of the existence of that agreement as it related to this airplane?

Mr. Abbott: Same objection. Assumes a state of the record which is not correct.

The Court: It is certainly not in variance with the Government's contention, is it? The Government contends the Form 65 does control the disposition of this particular plane in suit.

Mr. Abbott: Yes, your Honor. But the question suggests the Form 65 is a form which existed——

The Court: Overruled.

The Witness: I was aware of the Form 65 as soon as I pulled the file, the Vineland School file.

Q. (By Mr. Blackman): Very well. Now, at the first meeting with the Finns you did pull the file, the Vineland School District file?

A. Yes, sir.

Q. And did you look at it?

A. I looked at the Form 65.

Q. My question is, did you look at the file with reference to the contents of the file? [606]

A. Well, I probably did thumb through some papers.

Q. Then I assume, Mr. Bradley, that in looking at the file you were aware that the Vineland School District had purchased two C-46 aircraft, were you not?

Mr. Abbott: I object to the form of the question. It assumes facts in the issue of purchase. I have no objection if the term used were "acquired possession of the aircraft."

(Testimony of Edward G. Bradley.)

The Court: Sustained.

Q. (By Mr. Blackman): You were aware of the fact that the Government had disposed of two C-46 aircraft to the Vineland School District at that time?

A. I did not check the Vineland file other than pull the Form 65. That was the point on which Mr. Finn seemed most anxious to talk. That is, the form the school had signed, the Form 65.

Q. Well, Mr. Bradley, is it your testimony that at no time that Mr. George Finn had had these conversations with you were you aware that the Vineland School District had obtained C-46 aircraft from the Government?

A. I was not aware of that.

Q. You were not aware of that?

A. No, sir.

Q. Are you aware of it today?

A. Yes, sir, I am.

Q. When did you first become aware of it? [607]

A. About a week or so ago, I believe.

Q. In your discussions with other members of your agency at the time these conversations took place, wasn't there any discussion of another C-46?

A. No, sir.

Q. You state that Mr. George Finn showed you some photographs? A. Yes, sir.

Q. Did he, in so many words, tell you those photographs related to the airplane that he was seeking to have registered?

A. That is right. He said he proposed to re-

(Testimony of Edward G. Bradley.)

habilitate that and start in an airline, and he wanted to register the plane.

Q. The language then was he proposed to rehabilitate the C-46 depicted in those photographs, register it and start an airline? A. Yes, sir.

Q. To your knowledge, did he ever register that C-46 aircraft?

A. I found out subsequently that the Civil Aeronautics Administration did register an aircraft.

Q. So that there was nothing in that statement of facts that Mr. Finn made to you that in any way you have since found out was untrue, was there? [608]

Mr. Abbott: May we have a clarification? What statement of facts?

Mr. Blackman: Well, the statement—may I answer counsel?

The Court: Yes.

Mr. Blackman: The statement of facts that Mr. George Finn told the witness that he intended to register the second C-46 and rehabilitate the same. Now, I have asked the witness whether he found out whether the second C-46 was registered. I will offer a stipulation that the second C-46 in truth and in fact has been registered in the Finns' name.

Mr. Abbott: I object to the second C-46. The whole tenor of conversation is that there is but one airplane under discussion.

Mr. Blackman: If your Honor please, if the witness misunderstood what Mr. George Finn stated, I believe I have a right to attempt to show that.

(Testimony of Edward G. Bradley.)

The question here is whether or not the witness has since discovered anything false about the statement Mr. George Finn made that he intended to register the second C-46. I offer the stipulation——

The Court: Why do you call it the “second C-46”?

Mr. Blackman: Because it is not the one in suit. I will call it the hulk.

The Court: Call it “an airplane other than the airplane in suit.” [609]

Mr. Blackman: Yes, sir, an airplane other than the airplane in suit.

The Court: You may ask him.

Mr. Blackman: I will offer a stipulation, first of all, that the C-46, other than the aircraft in suit, has in truth and in fact been registered by the Civil Aeronautics Administration to the Finns.

Is that stipulation acceptable?

Mr. Abbott: It is acceptable if the date of registration is fixed, which is a date sometime prior to the registration of the aircraft in suit. Otherwise, it is incomplete.

Mr. Blackman: Whatever the date is.

The Court: May it be stipulated that some time before the registration of the airplane in suit the defendants Finn had registered with the Civil Aeronautics authorities the airplane referred to here as the hulk?

Mr. Blackman: Yes, your Honor.

Mr. Abbott: In their own names, your Honor, it is so stipulated.

(Testimony of Edward G. Bradley.)

The Court: Very well.

Mr. Blackman: As far as the records are concerned, I offer the further stipulation that it still remains registered to them.

Mr. Abbott: So stipulated. And, may it please the court, I will request the defendants Finn supply the [610] registration certificate and the Government will stipulate to it.

Mr. Charles C. Finn: We will be glad to do that.

The Court: Do you have it?

Mr. Charles C. Finn: I think it may be in evidence.

Mr. George C. Finn: I have it, your Honor.

The Court: Is it among the exhibits marked for identification?

Mr. George C. Finn: No, your Honor. It is in another file. I have the original of that.

The Court: Well, it isn't going to do any good to produce these things after the trial.

Mr. George C. Finn: Your Honor, I am not producing this for my benefit.

The Court: Very well.

Q. (By Mr. Blackman): Now, my question, Mr. Bradley, is this: Have you since that conversation found out anything untrue about Mr. George Finn's statement, as he made it to you, concerning the airplane depicted in those photographs?

The Witness: Would you please repeat that?

Mr. Blackman: Mr. Reporter, would you please read the question?

(The question was read.)

(Testimony of Edward G. Bradley.)

The Witness: No.

The Court: By "those photographs," I take it you mean the photographs which the defendant Finn showed the witness [611] in Washington on the occasion the witness testified to.

Mr. Blackman: Yes.

The Court: Photographs which have not been produced here.

Mr. Blackman: Yes.

The Court: Do you so understand the question?

The Witness: Yes, sir.

Q. (By Mr. Blackman): Now, you stated that you were not aware, Mr. Bradley, of the C-46 not in suit having been purchased by Vineland at the time of that conversation in Washington, but you are aware of that fact today.

Now, would an examination of the Vineland file, which you pulled for Mr. Finn at the time he was in your office in Washington, D. C., have disclosed the fact there were two C-46 aircraft obtained by the School District, had you looked in that file and examined those documents?

A. I believe it would, yes.

Q. But you never did that, is that right?

A. No, sir.

Q. Yet, as I understand you, Mr. Bradley, Mr. Finn was quite anxious about obtaining some sort of a sales document that he could present to the Civil Aeronautics Administration, was he not?

A. I believe he was.

Q. And one reason he expressed to you was that

(Testimony of Edward G. Bradley.)

he wanted to look in the file to see whether or not such a sales [612] document existed there, did he not?

A. I can't recall that specifically. Mr. Finn asked me if he could look at the entire school file. I told him yes. He didn't make any specific reference to any particular documents. So I made the file available to him at a nearby desk, and he sat down for probably an hour. He may have looked at the documents, and so forth. I didn't stand by Mr. Finn while he was looking in the file.

Q. Did you ever look into the file at any time when he was not immediately present?

A. I can't recall that I did.

Q. Did he ever tell you, "Here, I have found a sales document," or anything to that effect?

A. He may have. It is quite possible.

Mr. Blackman: Mr. Clerk, will you lay before the witness International's Exhibit A? Perhaps the witness has that exhibit, which consists of a sheaf of photostatic copies from the Civil Aeronautics Administration.

Q. (By Mr. Blackman): Directing your attention to the first photostatic copy that appears therein, do you see a sales receipt?

A. Yes, sir.

Q. Isn't that the sales receipt that Mr. Finn stated that he needed for the purpose of registering the airplane?

Mr. Abbott: Objection. It assumes a fact not in

(Testimony of Edward G. Bradley.)

evidence. [613] The witness has testified directly to the contrary.

The Court: Sustained.

Q. (By Mr. Blackman): Have you ever seen that sales receipt before?

A. I don't believe so.

Q. You don't believe so. Did Mr. Finn tell you, after he had looked through the file, that he had found any paper that would be useful to him in registering the airplane?

A. Well, I don't know whether he used that expression. He did say that he wanted a copy of the Form 65. And I can't recall that there was any discussion about any other particular papers. I had the file and he could have made copies if he so desired.

Q. Mr. Bradley, you had been familiar with the surplus property transactions before Mr. George Finn came into your office, had you not?

A. Would you please repeat that?

Q. You had been familiar with the surplus property transactions before the meeting with Mr. George Finn, had you not?

A. By "surplus property," could you mean aircraft?

Q. Yes.

A. I started to work on aircraft in January of 1951. I then became conscious of the aircraft disposal program as it was conducted by the War Assets Administration. [614]

(Testimony of Edward G. Bradley.)

Q. Is it not a fact that in these files which the Government maintains concerning the disposal of any particular piece of property, they attempt to keep a copy of whatever documents have been delivered to whoever has purchased that property?

A. That is right.

Q. So that if the Government delivered a sales receipt such as the one you are now looking at, attached to International's Exhibit A, wouldn't you normally expect, in the ordinary course of business, to find a copy or a duplicate original of that sales receipt in the file in Washington?

A. That is right.

Q. So that if Mr. Finn had told you he had found such a sales receipt in there and he needed it for the purpose of registration, that would not be outside the ordinary course of business as far as you know?

Mr. Abbott: I object, your Honor. That again assumes an erroneous state of the record. This witness testified Mr. Finn made no——

Mr. Blackman: I stated, "If Mr. Finn had stated to you——" and the testimony——

The Court: That is purely hypothetical, isn't it? Sustained.

Q. (By Mr. Blackman): Now, if Mr. Finn wanted a copy of any document in that file, Mr. Bradley, how would he obtain [615] it?

A. Well, he would ask me for it, probably.

Q. Sir? A. I say he would ask me for it.

(Testimony of Edward G. Bradley.)

Q. And if he had asked you for it would you supply it to him?

A. I very probably would have.

Q. And if he asked you for a copy of the sales receipt, would you have supplied that to him?

Mr. Abbott: Objection. That again assumes an erroneous state of the record. There was no such discussion in this witness' testimony.

The Court: The question does not assume it, does it?

If he asked you for a copy of anything that appeared in the file, would you have furnished it to him?

The Witness: I believe I would, sir.

The Court: Does that cover it?

Mr. Blackman: Yes.

Q. (By Mr. Blackman): And you would have done that, Mr. Bradley, even knowing that he intended to use such a document to go over to the Civil Aeronautics Administration and get a registration certificate on the airplane?

Mr. Abbott: Objection.

The Witness: I did not know that.

The Court: If he said, "I want to take these documents [616] over to the Civil Aeronautics Administration," you would still have given them to him, wouldn't you?

The Witness: I don't believe I would.

The Court: You wouldn't have given him copies?

The Witness: I don't believe I would have, sir.

Q. (By Mr. Blackman): But your testimony

(Testimony of Edward G. Bradley.)

was that you did know that he intended to go over to the Civil Aeronautics Administration and get a registration.

Mr. Abbott: Objection, your Honor. That was not the witness' testimony as to the first or second meeting.

The Court: Sustained in that form. You may ask him if it was a fact.

Q. (By Mr. Blackman): Isn't it a fact, Mr. Bradley, that Mr. Finn at all times told you that he wanted to apply for a registration on the airplane in suit?

A. At the first meeting he did, yes.

Q. So from then——

The Court: The airplane in suit?

Mr. Blackman: In suit.

The Witness: The airplane of which he showed me pictures.

Q. (By Mr. Blackman): So that from and after——

The Witness: I did not know there were two airplanes at the time I talked to Mr. Finn.

Q. (By Mr. Blackman): From and after that time you knew that he wanted to get a registration certificate? [617]

A. Yes, sir.

Q. Now, you mentioned something about this agreement between the Defense Department and the Federal Security Agency regarding the enforcement of the scrap warranty clauses.

A. Yes.

Q. Was that ever reduced to a written document that you know of?

(Testimony of Edward G. Bradley.)

A. I believe it was, sir. I believe there is a policy letter which quotes an agreement between the Department of Defense and the then War Assets Administration which indicates that the Department of Defense, since aircraft are considered to be implements of war, that they should not, educational aircraft should not be used for flight purposes by commercial users. I think I better state that.

Q. Do you have that agreement which you say was entered into between the two agencies?

A. I am sure there must be something in the file.

Q. Or, the Federal Security Agency and the Defense Department?

A. I am sure there must be something in the file.

Mr. Blackman: Will you produce it when you have it?

Mr. Abbott: We have several policy letters, and we are thumbing through them now to find the appropriate one.

Q. (By Mr. Blackman): You stated that the primary purpose of that agreement, as far as known, was to see that these [618] aircraft did not fall into the hands of foreign governments, isn't that true?

A. Yes.

The Court: Your answer?

The Witness: Yes, sir.

Q. (By Mr. Blackman): And do you have any personal knowledge as to whether or not there were only certain limited types of aircraft that were

(Testimony of Edward G. Bradley.)

involved? Namely the aircraft that are directly used in combat?

A. Well, it was not limited to just combat type aircraft. All aircraft. Well, I wouldn't say all aircraft, but C-46s and C-47s, any large passenger-type aircraft, or any combat-type aircraft were the type that the Department of Defense was interested in not having flown.

Q. Is it not a fact that the Defense Department, at the time in question, had hundreds of C-46 aircraft sitting on fields that were in mothballs?

A. I did not know that, sir.

Q. You didn't know that? A. No, sir.

Q. Is it not a fact that there have been no C-46 aircraft manufactured since the end of World War II? A. I did not know that, sir.

Q. Well, you are certainly aware that no C-46 aircraft are being manufactured today? [619]

A. I cannot say for certain. I am not an aviation enthusiast.

Mr. Blackman: I will offer a stipulation that there have been no C-46 manufactured since the end of World War II.

Mr. Abbott: Your Honor, I don't know the date that manufacture ceased.

The Court: Will you accept counsel's statement for it?

Mr. Abbott: If he will make it by January 1, 1947. I feel confident by that date the manufacture had ceased.

Mr. Blackman: We will make it that date, with

(Testimony of Edward G. Bradley.)

leave to bring in an earlier date if we are able to produce it.

The Court: Very well. For the present purpose the stipulation is that not since January 1, 1947, have there been any Model C-47s——

Mr. Abbott: C-46s, I believe.

The Court: ——C-46 airplanes manufactured.

Mr. George C. Finn: Your Honor, may I offer the additional information that the company is out of business. The Air Force called them obsolete and cannot be used as tactical aircraft; can't obtain parts——

The Court: You are offering that further stipulation?

Mr. George C. Finn: I will offer it in the interest of justice in the courtroom to co-defendants.

Mr. Abbott: We do not so stipulate and object to the form in which the statement was made, as of January or April [620] 1951, that was not the fact, and we do not so stipulate.

The Court: Very well. The stipulation is refused.

Mr. George C. Finn: If the plaintiff has any information contrary to that, I will be glad——

The Court: The stipulation is refused.

Q. (By Mr. Blackman): Mr. Bradley, at the time Mr. Finn came in to speak to you in Washington, were you aware of any contract between the Vineland School District and the Finns relating to any airplane?

(Testimony of Edward G. Bradley.)

A. Mr. Finn stated that he had a bill of sale from the Vineland School District.

Q. Did he show it to you?

A. I believe he did.

Q. Will you look at International's Exhibit A, please? Turn to the last page on that and see if you can identify that document for me?

A. I cannot be sure that this is the document. I didn't examine it closely.

Q. But you say you do believe that he showed you the bill of sale?

A. I have that recollection.

The Court: Would this be a convenient time to suspend for the morning recess?

Mr. Blackman: Yes, your Honor.

The Court: We will take a recess for five minutes, [621] members of the jury, and you are now excused for that time subject to the usual admonition.

(The jury left the courtroom.)

The Court: You may step down, Mr. Bradley.

Let the record show that the jury have retired from the courtroom.

Has the Government any further requested instructions?

Mr. Abbott: We do, your Honor.

The Court: You may serve them and file them with the clerk.

Any other parties have any further requested instructions?

(Testimony of Edward G. Bradley.)

Mr. Nelson: We do, your Honor. We will file them at this time, if the court please.

The Court: I would like to have them before I leave the bench now.

Mr. Abbott: May the record show that all counsel have been served, your Honor?

The Court: Only all counsel? Have you served the defendants Finn?

Mr. Abbott: And the other parties appearing without counsel.

Mr. Nelson: May the record also show that the defendants Vineland School District and Bancroft instructions have been served on all parties, and counsel? [622]

The Court: Very well. Anything further, gentlemen?

Mr. Abbott: Nothing further, your Honor.

The Court: We will recess for five minutes.

(Short recess.) [623]

The Court: Let the record show the jury are present. Where is our witness, Mr. Bradley?

Mr. Abbott: Mr. Bradley.

(Thereupon the witness resumed the witness stand.)

Q. (By Mr. Blackman): Then, Mr. Bradley, I take it you did not know anything about the terms of the Vineland contract with the Finns, as a result of which they purchased the airplane in suit?

A. No, sir, I did not.

(Testimony of Edward G. Bradley.)

Q. Now, after Mr. Finn had spoken to you the first time, you state that either you or he suggested a meeting with the legal representatives of both agencies?

A. That is correct. I believe that was after the second meeting, as I recall it.

Q. After the second meeting? A. Yes.

Q. Now, at that time did you ever think that it might be useful to have present some of these government officials who you say had the authority to make these releases?

A. I didn't think that was necessary, because, as I recall it, Mr. Finn was concerned about the legal aspects on the matter of title, what interest he acquired by virtue of his purchase from the school, and a, shall we say, clarification or interpretation of War Assets Regulation 4, and also the terms which were shown on Form 65. [624]

Q. But, in any event, the stated purpose of the meeting was that the Finns wanted to obtain releases on the restrictions; isn't that true?

A. That is essentially true, sir, yes.

Q. And you notified those persons that you thought would be most vitally interested in connection with whatever business that meeting had to do with? A. Yes, sir.

Q. And everybody you notified was there?

A. Yes, sir.

Q. Now, at that meeting didn't Mr. Howard state that, in his opinion, under Civil Air Regula-

(Testimony of Edward G. Bradley.)

tions the Finns had enough interest to register title to the airplane in suit? A. Yes, he did.

Q. And you were aware that CAA was also charged with receiving proof of ownership as a condition to registering the airplane, were you not?

Mr. Abbott: Objection, your Honor. That states erroneously the record and the law.

The Court: I suggest you rephrase it.

Q. (By Mr. Blackman): You were aware that before the CAA would register an airplane, one of its duties was to receive from the applicant proof of ownership?

Mr. Abbott: The same objection, your Honor. If counsel will say "some evidence of ownership," I will have no objection. [625]

Mr. Blackman: Very well. I will rephrase it, and say as to evidence of ownership. Were you aware of of that?

The Witness: Yes, sir.

Q. (By Mr. Blackman): Well, didn't you, in your own mind, Mr. Bradley, feel that it was inconsistent for one agency to receive evidence of ownership, and go ahead and register the airplane, while the other agency maintained that there was no ownership and there was no right to ownership of the plane?

A. I didn't participate in that conversation. That was between Mr. Howard, the attorney or an attorney from the Civil Aeronautics Administration, and Mr. Hiller and Mr. Davidson, who were in

(Testimony of Edward G. Bradley.)

the office of the General Counsel in the Federal Security Agency.

Q. But that was stated in your presence, was it not, by Mr. Howard, that he thought there was sufficient evidence of ownership there to register title?

A. Yes, that is true, and the attorneys for Federal Security Agency took issue, as I recall it.

Q. Now, when one agency wants to take up a matter with another agency, isn't it customary to set forth some sort of policy letter, indicating the policy which the first agency seeks to establish?

A. I don't think I quite understand the question. [626]

Q. Well, you say that the attorneys for Federal Security Agency took issue with Mr. Howard's statement?

A. Yes, sir.

Q. Was there ever anything more than that done by the Federal Security Agency to see that this airplane was not registered?

A. I don't know what action the lawyers took in that respect.

I do know that between agencies frequently there are meetings and discussions at which the lawyers argue one side, and then argue the other, and to what conclusions they come, I don't know. I suppose they reduce them to writing. But in this instance our lawyers did not agree with Mr. Howard.

Q. Certainly it is nobody's intention to have one agency take action which is inconsistent with the position of the other agency, is it?

(Testimony of Edward G. Bradley.)

Mr. Abbott: We will object to the form of the question, your Honor. Whose intention?

The Court: It is argumentative.

Q. (By Mr. Blackman): Certainly, it was never your intention that one agency would take action that was inconsistent with the position of the agency which you represented, was it?

A. I don't know whether this was inconsistent. I think the lawyers were discussing proof of ownership, and I [627] think the Civil Aeronautics Administration law says that registration does not constitute proof of ownership. That is the side that the Federal Security Agency lawyers took.

Q. Well, let's approach it this way, Mr. Bradley; You were aware that the Finns didn't intend to scrap this airplane, were you not?

A. That's right, because Mr. Finn said that he wanted to fly it.

Q. You knew they wanted to fly it?

A. Yes, sir.

Mr. Abbott: May I inquire which aircraft is being referred to by counsel? The one in the pictures, or the one in suit?

Mr. Blackman: "This aircraft" always refers to the one in suit, your Honor.

The Court: Did you so understand it?

The Witness: No, sir. The only aircraft I had knowledge of was the pictures Mr. Finn had showed me at that time.

(Testimony of Edward G. Bradley.)

Q. (By Mr. Blackman): Well, you were aware that the Finns did not intend to scrap that airplane, weren't you? A. That's right.

Q. So that the only intention that they expressed to you concerning any aircraft was that they intended to fly it? A. Yes, sir.

Q. Were you also aware that in order to fly the aircraft, [628] you must have a registration on it? A. Yes, sir.

Q. You knew that to be the state of the law, didn't you? A. Yes, sir.

Q. Well, Mr. Bradley, were you also aware that under Civil Air Regulations an aircraft registration immediately ceases upon a scrapping of an airplane?

A. I don't think I understood the question, sir.

Q. Did you know that the scrapping of an aircraft would immediately have the effect to terminate any registration for that particular airplane?

A. I would assume so. If that were the case, that it was scrapped, then I would imagine that the registration would become null and void.

Q. Well, there was never any discussion regarding scrapping of any airplane by the Finns, when they came into this conference?

A. Not on Mr. Finn's part.

Q. You also knew, didn't you, Mr. Bradley, that the flying of this airplane or any plane that the Finns had reference to would require first that it be licensed? A. I believe I knew that.

Q. That is, a regular licensing procedure by

(Testimony of Edward G. Bradley.)

the CAA? A. I believe so, yes, sir. [629]

Q. And you knew that licensing would require the aircraft to be first put into flying condition, didn't you? A. yes.

Q. In other words, it had to be rehabilitated before it could be flown, didn't it?

A. Yes sir.

Q. You were aware that this would require the expenditure of a large amount of money by the Finns or anybody else who did it at the request of the Finns, weren't you?

A. It would appear quite so to me from the pictures, that it would have required considerable money to have put that plane in the air.

Q. You knew when this was done the airplane would be considerably improved over what you ever saw in any photograph, wouldn't it?

A. It would have to be, yes.

Q. And it would be worth more as a result of that? A. I would imagine so, yes.

Q. Did you intend to have all this happen, and then step in and have the Government own the airplane?

Mr. Abbott: Objection, your Honor. That question is argumentative in the extreme.

The Court: Sustained.

Q. (By Mr. Blackman): Did you intend to let all this happen? [630] A. No, sir.

Q. Did you take any steps to stop it?

(Testimony of Edward G. Bradley.)

A. I reported the meeting with Mr. Finn to my superior, who was the Chief of the Surplus Property Disposal Division. I reported just what took place.

Q. To whom did you report it, sir?

A. To the Chief of the Surplus Property Utilization Division, who was my superior.

Q. Is he one of the individuals that had this delegation of authority which you spoke of?

A. Yes, sir.

Q. You reported it to him? A. Yes, sir.

Q. To your knowledge, did he take any steps to stop the registration?

A. Up to the middle of June, I do not know—beyond the middle of June, I do not know. I was not aware of any definite action that he took between the time that Mr. Finn was in the office and the middle of June, 1951.

Q. Up until the middle of June, as far as your personal knowledge is concerned, he took no steps to stop the registration; is that right?

A. As far as I know, sir.

Q. You were asked concerning this RFC Form 35.

Mr. Blackman: Mr. Clerk, will you lay before the witness [631] Defendants Finn Exhibit B?

(The document was placed before the witness.)

Q. (By Mr. Blackman): Do you have it, Mr. Bradley? A. Yes, sir, I have it, sir.

(Testimony of Edward G. Bradley.)

Q. Have you ever seen a document like that before? A. I have seen a blank Form 35.

Q. Did you ever hear of the Grossmont School?

A. No, sir.

Q. Did you ever see a document that had markings on it similar to that? A. No, sir.

Q. Would those markings have any meaning to you? I want you to look at it carefully, if you will, please. The answer?

A. Would you mind restating the question, please?

Q. Would those markings have any meaning to you? A. No, sir, they wouldn't particularly.

Q. You were not in the agency at the time that the Regulation 4, effective at the time of the sale of the airplane in suit was promulgated?

A. No, sir, I was not.

Q. Who in the agency would be responsible for the draftsmanship of the War Assets Form 65?

A. I wouldn't have the slightest idea, sir.

Q. It would be some predecessor of yours? [632]

A. I beg pardon?

Q. It would be some predecessor of yours?

A. I don't know what you mean by "predecessor."

Q. Well, someone who held your official position before you did?

A. It wouldn't necessarily be my official position. It would be someone who was concerned with the disposal of aircraft in War Assets at that time.

(Testimony of Edward G. Bradley.)

Q. At this moment you wouldn't have the slightest idea who it was who drafted the contract?

A. No, sir.

Q. War Assets Form 65, which is Plaintiff's Exhibit 1 in evidence? A. No, sir.

Q. Very well. Had you ever seen that form before the Finns, or before Mr. George Finn asked for a copy of it out of the Vineland School District file?

A. I had—I believe I had seen a copy of the Form 35.

Q. 35 or 65?

A. This is Form 25 that I have here.

Q. My question was as to Form 65.

A. Oh. Would you please state it again, then?

Q. Had you ever seen a copy of War Assets Form 65 before Mr. George Finn asked to see it in the Vineland School [633] District file?

A. Yes, sir, I had.

Q. When did you first see it before that time?

A. Probably sometime in January or February of '51.

Q. At that time did you ever check the form against the regulations? A. No, sir, I didn't.

Q. Nobody told you to? A. No, sir.

Q. And, I assume, you just never did?

A. No, sir.

Q. Is that right? A. Yes, sir.

Q. Had you ever heard it discussed by anybody in the agency? A. No, sir.

Q. And you stated a few moments ago you had

(Testimony of Edward G. Bradley.)

seen a Form 35, which is the Defendants Finn Exhibit B, for identification?

A. I believe I had, sir.

Mr. Abbott: We will object to that, insofar as the question implies that he saw this form with the notations. The witness' testimony is that he saw a blank Form 35.

Mr. Blackman: Your Honor, I will accept that.

The Court: I suggest you rephrase your question, and be [634] specific.

Q. (By Mr. Blackman): You had seen a copy of the War Assets Form 35, which is the form of the agreement, aside from the writings which appear thereon, Finns' Exhibit B, for identification?

A. That is, the RFC form?

Q. Yes. A. I had seen a blank.

Q. When?

A. Oh, possibly sometime between January of 1951, and June of '51.

Q. Had you ever compared the Form 35, with the Form 65? A. Yes.

Q. Did that comparison lead you to any conclusion as to whether there was any difference between the two forms?

A. No, sir. The sentence with respect to the scrapping provisions of Form 35, and on the Form 65, are identical.

Q. They are identical? A. Yes, sir.

Q. And the Form 35, do you know when that was first used by the RFC?

A. It was sometime before I ever came with the agency.

(Testimony of Edward G. Bradley.)

Q. As a matter of fact, it was sometime before the promulgation of Regulation 4, that was in effect at the time this airplane in suit was disposed of, was it not? [635]

A. I would assume so, from the date that appears on the form.

Q. To your personal knowledge, at the time the current regulation was promulgated, there was no change made in the form, the old form of the disposal agreement, being the Form 35, and the form which was used at the time the School District signed Plaintiff's Exhibit 1? There was no change at that time, was there?

A. What do you mean by "current regulation"?

Q. Well, the regulation in effect at the time the aircraft in suit was disposed of.

A. I am afraid you will have to repeat the question. I am very sorry that I didn't—

Q. To your personal knowledge, was there any change made between the Form 35 agreement and the Form 65 agreement, insofar as the scrapping provision is concerned at any time?

Mr. Abbott: Your Honor, those two forms are before the court, and they speak for themselves, and we, therefore, object to the form of the question. Whether they are different or the same is apparent on their face.

The Court: Sustained.

Q. (By Mr. Blackman): Did you ever hear a discussion, Mr. Bradley, as to whether or not there

(Testimony of Edward G. Bradley.)

should be any change between the two forms of agreement by reason of the new regulation which was enacted immediately prior to the time that the [636] aircraft in suit was disposed of?

A. No, sir.

Q. Are you familiar with the educational disposal program, Mr. Bradley?

A. I am, somewhat.

Q. Is it not a fact that there was a requirement that before surplus property could be disposed of to educational institutions that it first be found to be commercially unsalable?

Mr. Abbott: Objection. This witness has no qualifications in that respect. Since he was not with the Federal Security Agency until January, 1951, he was in no way participating in the disposal provisions in 1946, and, therefore, would be an incompetent witness on that point.

The Court: What difference would it make? What is the purpose of the question?

Mr. Blackman: I will offer a stipulation that this particular airplane was first found to be commercially unsalable before it was disposed of.

The Court: The airplane in suit?

Mr. Blackman: Yes.

Mr. Abbott: I cannot so stipulate because at that time, as shown by the Government's own witness, it had a fair market value of \$5,000.

Mr. Blackman: I believe that counsel has already stipulated [637] that this disposal was in the ordinary course of business so far as the Govern-

(Testimony of Edward G. Bradley.)

ment is concerned. However, that stipulation has not been offered in open court since the jury has been impaneled, and since it is one which we do believe to be material, I will repeat the stipulation here, and offer it to the Government.

The Court: What is the stipulation which you propose now?

Mr. Blackman: That the disposal of the airplane in suit was made by the Government in the ordinary course of its business, and pursuant to all existing laws and regulations in effect at that time.

Mr. Abbott: So stipulated.

Mr. Blackman: Very well.

Q. (By Mr. Blackman): Mr. Bradley, are you aware of other school district aircraft that have been sold on the open market?

A. I have heard of—

Mr. Abbott: May we have a clarification, your Honor? We object to the form of the question. Counsel does not identify what he means by “school district aircraft.”

Mr. Blackman: Very well.

Mr. Abbott: Nor how sold on the open market.

Q. (By Mr. Blackman): Are you aware of surplus property aircraft owned by school districts which have been sold to [638] private consumers?

A. I have heard of some cases.

Q. Do you have any personal knowledge of such sales? A. No, sir.

Q. Are you aware of one that was located up at Lancaster, California, and sold this year?

(Testimony of Edward G. Bradley.)

A. No, sir.

Q. Are you aware of one that was sold by the University of Southern California, a C-46?

A. No, sir.

Q. What knowledge do you have concerning the sale of surplus aircraft sold by school districts?

A. I haven't any.

Q. None at all?

A. I am not in that division at all.

Q. Then on the questions which counsel asked you concerning the personal knowledge that you have, would it be true that you don't have any personal knowledge as to whether notice to the General Services Administration has been given in connection with the aircraft in suit?

A. Would you please repeat that? [639]

Q. I believe you were asked whether notice to the General Services Administrator had been given in connection with this particular airplane. Do you recall anything like that?

Mr. Abbott: By "this particular airplane"—

Mr. Blackman: The airplane in suit.

The Witness: I recall having said that I had no knowledge of any notice being given to the General Services Administrator.

Q. (By Mr. Blackman): Well, that is what I wish to develop, that you do not have any knowledge one way or the other on the subject.

A. That is right, sir.

Q. Very well. With respect to what any of your superiors may have done regarding a release of

(Testimony of Edward G. Bradley.)

the restrictions of the airplane in suit, you have no knowledge one way or the other on that, either, have you? A. No, sir.

Q. All you know is that you reported the transaction or the incident with the Finns to your superiors? A. That is right.

Mr. Blackman: That is all.

The Court: Any further cross-examination of this witness?

Q. (By Mr. Nelson): Mr. Bradley, calling your attention to this meeting which you had with the counsel at C.A.A., [640] and two members, apparently of F.S.A., counsel were also present, were you present at that entire meeting? A. Yes, sir.

Q. Was it a formal or an informal type meeting?

A. I would say it was rather informal. The place where I work was a rather large room. There were seven or eight desks, and three or four men and their secretaries sat there. And we sort of gathered around one desk. It was an informal type meeting.

Q. And at times there were individuals discussing matters between themselves while the meeting was going on?

A. I would say that would be a very good description.

Q. Is it possible then that these conversations concerning the release of the particular aircraft could have taken place between the Finns and some other member at that conference, and you didn't hear it?

(Testimony of Edward G. Bradley.)

Mr. Abbott: May we have an identification of the aircraft?

Mr. Nelson: I always refer to the aircraft in suit.

Mr. Abbott: Then we object to the form of the question. The witness' testimony is that there was no conversation on any airplane except the hulk.

Mr. Nelson: My question is, could these have taken place without his knowledge.

The Court: I suggest you reframe the question and not assume facts not in evidence. [641]

Q. (By Mr. Nelson): Could conversations have taken place, Mr. Bradley, between, other persons present at this meeting concerning the release of restrictions on any aircraft?

A. Conversations which I did not hear?

Q. Yes.

A. That is possible.

Q. Now, you indicated earlier, Mr. Bradley, that you are not a lawyer, and this particular meeting went into matters which were technical in nature, is that true? A. Yes, sir.

Q. You also indicated that most of the conversations were between the lawyers and that you more or less sat back and listened as the debate went on.

A. Yes, sir.

Q. Is it possible that whatever decision which was the result of that meeting was one which was technical and which you do not have any particular knowledge—— A. Would you please——

Q. ——because it was technical in nature? I

(Testimony of Edward G. Bradley.)

will rephrase the question. Isn't it possible, Mr. Bradley, that inasmuch as the decisions and discussions were technical in nature, that you, as a layman, would not have any personal knowledge as to what final decision was made by the people present at that meeting?

A. I don't think that would be so. I believe that any [642] decisions, if any were made, would be reduced to language which would be understood by all. Not all there were lawyers. Miss O'Neil was not a lawyer. I was not a lawyer. I believe that it would have been reduced to language that we would understand, if a decision had been made.

Q. Was there such a summary or reduction of the matters that were discussed made at the termination of this meeting?

A. As I recall it, Mr. Heller, an F.S.A. attorney, stated that in view of the policy, we could not release the restrictions, and that if Mr. Finn felt that he wanted to go to a higher authority he could see the Administrator.

Q. Do you have any knowledge, Mr. Bradley, of any other meetings of the counsel of C.A.A. and F.S.A., Federal Security Agency lawyers, besides this one, and after this one, wherein they discussed this matter of releases of restrictions?

A. I have no knowledge of such a meeting.

Q. Could that meeting have taken place?

A. It might have. I doubt it, because I would have heard of it, I think.

(Testimony of Edward G. Bradley.)

The Court: Would it be part of your duties to have known about it?

The Witness: I should. It would fall within my area for the lawyers to have reported any subsequent discussions they had with——

The Court: Can the jury hear this? [643]

A Juror: No.

The Court: Please read it, Mr. Reporter.

Address your remarks to the jury, Mr. Bradley.

(The record was read.)

The Witness: ——with the Civil Aeronautics attorneys.

Q. (By Mr. Nelson): Are the counsel of F.S.A. located in the same building that you are in, or were in at that time? A. Yes, sir.

Q. Approximately how many counsel did they have?

A. Well, there was quite a few of them around there. They possibly have 30 or 40 lawyers.

Q. Do each one of them report to you any time they have a discussion concerning the disposal of surplus property that might come into your channel?

A. Only two lawyers were working on surplus property matters.

Q. Was it their policy to report each instance, if they discussed any of these matters with any other agency of the Government, to you?

A. If it had a bearing on work I was doing.

(Testimony of Edward G. Bradley.)

Q. How long were you chief of this Compliance Division?

A. From January of 1951 to about the middle of June of 1951.

Q. Now, you have indicated that you have been a member of the federal service since 1934, is that correct? [644]

A. Yes, sir.

Q. Has it usually been your task to meet the public on various matters concerning the Government in connection with this Government service?

A. No, sir. I have held several positions with the Government, some of which have brought me in contact with the public and some of which have not.

Q. In connection with this position you had as chief of the Compliance Division, did you not see people every day that were coming in from out of town in connection with matters of your office?

A. That is right. That is true.

Q. Were there many people that came in, or just one or two a day?

A. I would say that maybe several in the course of a week came in. Usually these people would inquire as to the restrictions that were—the restrictions that were placed on educational aircraft. And they want to get a release of the restrictions. And I always acquainted them with the policy of the F.S.A. and told them I was powerless to do anything about it.

Q. Did you have any other meetings with an agent of a school or a person who was inquiring

(Testimony of Edward G. Bradley.)

as to obtaining releases of an aircraft at a school?

A. Yes, I had several. [645]

Q. Can you recall those meetings at this time?

A. I cannot recall the specific meetings.

Q. What is there about this particular meeting, Mr. Bradley, which allows you to recall each instance of conversation and meeting which occurred in connection therewith?

A. This was a very lengthy conversation. Mr. Finn visited my office, I believe, four times. That was very unusual. It was unusual because in all other cases where representatives of aircraft companies or people interested in purchasing educational aircraft, that when they inquired about the release of restrictions, I told them about the Administrator's policy, about our agreement with the Department of Defense, and I told them that under no circumstances would we release restrictions with regard to the scrapping. I acquainted them with our agreement with the Department of Defense to recapture plans that became excess to educational needs, or unfit for the purpose for which they were transferred. And in effect, I stated that we had put a freeze on any educational aircraft that was not being used by a school for educational purposes.

The people accepted that. And to my knowledge they never came back the second time.

Q. These conversations and meetings with the Finns all occurred over three years ago, did they not?

A. Approximately so. [646]

Mr. Nelson: No further questions, your Honor.

(Testimony of Edward G. Bradley.)

Mr. Abbott: If your Honor please, counsel has——

Mr. George C. Finn: Pardon me.

The Court: You wish to examine the witness?

Mr. George C. Finn: Well, your Honor, in the interest of——

The Court: Do you wish to examine the witness?

Mr. George C. Finn: Yes.

The Court: Proceed to the lectern and examine him.

Q. (By Mr. George C. Finn): Mr. Bradley, you remember when I first came to your office in April? A. Yes, sir.

Q. Do you remember when I told you I had a problem I would like you to help me solve, is that correct?

A. You may have used those words, Mr. Finn.

Q. Pardon?

A. I say, you may have used those words. I don't know whether I recall that exactly.

Q. Was your attitude friendly, Mr. Bradley, or was it antagonistic? Or what was your attitude?

A. I would say my attitude was friendly.

Q. We sort of got along pretty well together, didn't we? A. I would say so.

Q. It was sort of one Irishman to another, trying to [647] get to a solution of a problem, is that correct?

A. Well, I could not agree, Mr. Finn, that there was a solution to the problem.

(Testimony of Edward G. Bradley.)

Q. That isn't the point. But, I mean, we didn't know whether there was or not, did we?

A. I knew that there was no immediate solution.

Q. No immediate solution. Did you put any obstacles in my way, Mr. Bradley, toward understanding this situation at all?

A. Well, the only obstacle I put in your way, I guess, was by stating to you the policy of the agency and the fact that we would not grant a release.

Q. That is correct. But otherwise, you didn't tell me it couldn't be done, and no way to find out any information whether it was necessary, where I could obtain a proper understanding of this thing, did you? You didn't well, sort of pass the buck and pass me around the circle, did you?

A. I don't believe I did.

Q. In fact, Mr. Bradley, you did try to help me, didn't you?

A. I don't think you can call it "help." I was sympathetic to your desires.

Q. Thank you.

A. But I realized, and I told you of the obstacles that were in your way and that the agency policy was hard and fast; [648] that I had no authority to waive that. And there was nothing I could do to help you.

Q. Well, you did refer me to certain regulations, didn't you?

A. Yes. I felt that possibly you might want to read them.

(Testimony of Edward G. Bradley.)

Q. And you felt that I should know, didn't you?

A. At our first meeting, Mr. Finn, I was under the distinct impression that you did not know the conditions under which the school acquired the plane.

Q. That was true, too, wasn't it, Mr. Bradley?

A. I presume so. I didn't know that to be a fact, and for that reason, I, and in fairness to you, I thought that you should know what the conditions were under which the school had bought the plane, had acquired it.

Q. You were trying to be fair at all times, weren't you, Mr. Bradley?

A. I felt that I was.

Q. Do you remember that the first time that I knew such Form 65 existed was when we found it in the file of Vineland School District?

Mr. Abbott: I object to the form of the question. The witness isn't competent to state an opinion as to Mr. Finn's state of mind.

The Court: You understand the [649-650] question?

Mr. George C. Finn: I will rephrase it.

Q. (By Mr. George C. Finn): You did know, and I had told you, that I did not exactly know what these restrictions were? I actually didn't know what I was up against at the time. And if you recall, we went to the file—do you recall that there we discovered the Form 65? A. Yes, sir.

Q. That is correct? A. Yes, sir.

Q. Fine. Now, do you recall, also, that you stated

(Testimony of Edward G. Bradley.)

that this file was available to me for my use as a public record?

A. I believe, Mr. Finn, that you asked me if you could examine the file in some detail, and I said, "Why, of course, you can."

Q. Yes. And you said that I couldn't take it out of the office, but if I cared to peruse the file in your office it was available, is that correct?

A. Yes.

Q. And that if I needed any copies of any documents that you could make copies of those, but you would not allow me to take the file away, that it wasn't proper?

A. I believe, as far as copies were concerned, we only discussed—this is my recollection—that we only discussed a copy of the Form 65. [651]

Q. Mr. Bradley, do you remember the Heddleston—a letter signed by Mr. Heddlestone? I asked if I could make a copy of that, and you referred me to a typewriter and you said, "You can't take it out, but you can sit here at the typewriter and copy this, if you like." Do you remember that?

A. I don't have a clear recollection of that, Mr. Finn. But I may have said that.

Q. Mr. Bradley, if I show you a copy of that letter, do you think you would recognize it?

A. I don't know whether I would or not.

Mr. George C. Finn: I will try. Your Honor, I don't know which exhibit it is.

The Court: Do you know the date of it?

(Testimony of Edward G. Bradley.)

Mr. Blackman: Your Honor, I find such a letter listed in Finns' exhibits as Exhibit E.

Mr. George C. Finn: Yes, sir.

The Court: Place Defendants Finn Exhibit E before the witness. That is in evidence now, isn't it?

Mr. Blackman: No, sir. Well, now, just a moment. I am not sure about that. I think it is. I have a little check mark after it.

Mr. George C. Finn: I think it is.

The Court: It is a teletype, is it not, dated July 10, 1946, Regional Director to Chief of the Fiscal Branch?

Mr. Blackman: Yes. [652]

The Court: Do you have it, Mr. Bradley?

The Witness: Yes, sir.

The Court: Your question?

Q. (By Mr. George C. Finn): Do you recognize that document as coming from the files, Mr. Bradley?

A. I don't recognize the document, as such. But it must have been a part of the Vineland School folder.

If you will recall, I did not go through the Vineland file with you. When you first appeared at the office, it was the first time we had had occasion to pull the Vineland file. And since you wanted to look at it, I said yes, and you sat at a desk and you looked at it, and I did not sit with you. Is that your recollection? [653]

Q. That is correct, Mr. Bradley, but you said that if there were any copies that I needed, you

(Testimony of Edward G. Bradley.)

would supply them, and do you remember that I was to check with you before I had any copies made, that you would take care of that? In other words, I couldn't steal any papers out of the file, Mr. Bradley, and it was a condition between you and I that where references were made to the file as to what documents I would need, it was necessary, you being chief of the office, that I check with you as to any documents that I wanted? Wasn't that correct?

A. I cannot recall that specific conversation, Mr. Finn.

Q. Well, whether you recall the specific conversation, would that normally be the case, Mr. Bradley?

A. I wouldn't say normally, because from the time I was appointed Chief of Compliance, I had never had occasion to pull a school file in that some two months or so.

Q. Well, Mr. Bradley, whether it was a school file or any other document in the office, would it be proper and would it be according to the conduct of your office that whoever wanted any copies of anything would have to check with you first?

A. Well, I would say that that would be the normal procedure, yes.

Q. That is the normal procedure, isn't it? [654]

A. Yes.

Q. Now, you say that this document probably was, or was in the school file. Isn't it probable, Mr.

(Testimony of Edward G. Bradley.)

Bradley, that I did check with you before I got a copy of that document?

Mr. Abbott: We will object to that, your Honor, as to his feeling as to what was probable. The witness has just testified that, to the best of his recollection, no such conversation took place.

The Court: Ask if it is so. Anything might be probable.

Q. (By Mr. George C. Finn): Is it so, Mr. Bradley, that I did check with you prior to obtaining the copy of that document?

Mr. Abbott: The same objection, your Honor. The witness' testimony is that no such copy was obtained.

The Court: He may change it now. Overruled. You may answer.

The Witness: I have no recollection, Mr. Finn, of having discussed this particular document with you.

Q. (By Mr. George C. Finn): Mr. Bradley, can you positively say that it was not, or that you did not give your permission for that document, and that it was not checked with you prior to acquiring it? A. I cannot say that.

Q. You cannot say that it was not?

A. No, sir. [655]

Q. But you cannot say that it was?

A. Yes, sir.

Q. Now, Mr. Bradley, will you refer to that document, please, and tell me what aircraft that

(Testimony of Edward G. Bradley.)

document refers to, to the best of your own knowledge?

Mr. Abbott: Objection. The document speaks for itself.

The Court: Sustained.

Mr. George C. Finn: I am asking for his knowledge. I would like to know if Mr. Bradley knows, regardless of what the document shows, whether Mr. Bradley identifies this aircraft as the aircraft in suit.

Mr. Abbott: Objection, your Honor. Mr. Bradley's identification would be immaterial.

The Court: You mean by that, has he seen it?

Mr. George C. Finn: No, your Honor. I mean by that, does he relate this document in any way to the aircraft in suit? His testimony was that he did look through the file of the Vineland School District, and I asked: Does this document relate in his mind to the aircraft in suit?

Mr. Abbott: The objection of the Government, your Honor, is that his present recollection of the document and his reading of it on the witness stand would be immaterial, and there is no foundation laid and it would be inconsistent with the prior testimony to attempt to relate it to something that occurred at that time, because he testified he did not see [656] the document in '51.

Mr. George C. Finn: Your Honor, he did so testify.

The Court: Sustained. Put your question.

(Testimony of Edward G. Bradley.)

Mr. George C. Finn: He testified he did not recall that he did see the document.

The Court: I recall the testimony. Proceed.

Q. (By Mr. George C. Finn): You did look in the file, Mr. Bradley, didn't you, the Vineland School file?

A. Only to the extent that you and I both examined the Form 65.

Q. Did you see any other document in that file, Mr. Bradley?

A. Well, there were several papers in it.

Q. Do you recall what they were?

A. I do not recall.

Q. Did you have any occasion, Mr. Bradley, to make a survey at all of any of the aircraft acquired by school districts with respect to this educational-disposal program?

A. What do you mean by "survey"?

Q. Well, you just took office, and you had never looked at any of these files prior to the time I was there, and that was in April. You took office in January. Did you make any survey at all to find out what kind of property you would have to administer, and where it was?

A. No, sir. [657]

Q. Isn't it true, Mr. Bradley, you told me you sent letters to all the various schools and that you were awaiting answers?

A. I did not send those letters.

Q. Who sent those letters, Mr. Bradley?

A. The regional offices sent the letters.

(Testimony of Edward G. Bradley.)

Q. But you had knowledge that those letters were sent? A. I beg pardon?

Q. You had knowledge that those letters were sent?

A. I don't have knowledge that any letters were sent.

Are you referring to the agreement we had with the Department of Defense to report to them any aircraft excess to educational needs for possible recapture?

Q. Mr. Bradley, I am referring to a survey which you told me was being made about the aircraft that were available in schools.

A. Yes, sir.

Q. Now, whether or not it was because of a request of the Defense Department or a request of the State Department or a request of anyone, I am not asking that question. I am merely asking, Did you make such a survey? A. Yes, sir.

Q. Did you make this survey yourself?

A. No, sir.

Q. Was the results of that survey transferred to your [658] department in any way?

A. The results of that survey did not appear prior to the time that I transferred to another job. I don't know what the results of the survey are.

Q. You had no results of that survey between April and June?

A. To my knowledge, that's right.

Q. When was the survey initiated?

A. Sometime during February, I believe.

(Testimony of Edward G. Bradley.)

The Court: Would this be a convenient time to suspend for the noon recess?

Mr. George C. Finn: Yes, sir.

The Court: We will take the noon recess at this time, ladies and gentlemen of the jury, until 1:45.

Before we separate, I would admonish you again of your duty not to converse or otherwise communicate among yourselves or with anyone else upon any subject touching the merits of this trial, and not to form or to express an opinion on the case until it has been finally submitted to you for your verdict.

I will excuse you until 1:45 this afternoon.

You may step down, Mr. Bradley.

(Thereupon the jury retired from the courtroom.)

The Court: Do you have a matter, Mr. Brett?

Before you speak, let's wait until the entire jury has [659] retired.

Mr. Brett: Your Honor, I am appearing here——

The Court: The record will show the jury has left the courtroom, and if there is nothing further, gentlemen, the case on trial will be recessed until 1:45 this afternoon.

(Whereupon, at 12:05 o'clock p.m., a recess was taken until 1:45 o'clock p.m. of the same day.) [660]

Wednesday, November 3, 1954; 2:00 P.M.

The Court: Are there ex parte matters?

Let the record show the jury are present.

Mr. Bradley was on the stand.

EDWARD G. BRADLEY

the witness under examination at the time of recess, resumed the stand and testified further as follows:

Mr. George C. Finn: Your Honor, I have found the registration certificate on N111H, and it happens to be photostated along with the bill of sale; the way my records have it. I would like to offer it for anybody that wants it.

Mr. Abbott: May we inspect the document?

The Court: You may.

Mr. George C. Finn: I haven't located the pictures yet, your Honor. I will still try to find them.

The Court: You wish the document marked for identification?

Mr. Abbott: May it be marked, your Honor?

The Court: Yes. It will be marked defendants Finn exhibit next in order for identification.

The Clerk: Defendants Finn AX for identification.

(The document referred to was marked Defendants Finn AX for identification.) [661]

The Court: That's the certificate of registration of the so-called hulk, is it?

Mr. George C. Finn: Yes, sir, the hulk.

Mr. Blackman: If the court please, during the recess, in looking over the exhibits, I found some

(Testimony of Edward G. Bradley.)

certain copies which include a copy of the registration of that particular aircraft, already marked for identification.

The Court: Well, this is another one. You might work it out with counsel during the recess. I don't see why you gentlemen can't discuss these matters.

Mr. Abbott: I am not aware that there is another copy of the document. Perhaps counsel can point it out to me.

The Court: Let's proceed now, and you gentlemen discuss it at a recess.

Proceed with your examination.

Cross-Examination
(Continued)

By Mr. George C. Finn:

Q. Mr. Bradley, you will recall that before we took a recess we were discussing a survey which you said was made on all of the aircraft contained in the schools; I believe pursuant to a request by the Defense Department or the State Department, or someone, but that your office was conducting such a survey. Do you recall that?

A. Yes, sir. [662]

Q. And you also stated, Mr. Bradley, that that survey had not been completed up until the time you left the Federal Security Agency in June of 1951, is that correct? A. That is correct, sir.

Q. Do you have any partial reports or returns at all from that survey? A. Not that I recall.

(Testimony of Edward G. Bradley.)

Q. Did you do anything of your own in your office to obtain any information in regard to that survey from anyone?

Mr. Abbott: We object to questions relating to a survey. There is no apparent materiality. We haven't objected to the first few questions, thinking Mr. Finn would not go any further into that.

The Court: What is the purpose of it?

Mr. George C. Finn: The purpose of this is to bring to the attention of the court that Mr. Bradley had charge of all of these airplanes, and we wish to lay the foundation that bringing such a matter to his attention was part of his duty, and that other matters of a similar nature should have been brought to his attention, and, if they have, what action was taken.

The Court: He isn't on trial here. Sustained. We aren't trying his office. [663]

Mr. George C. Finn: Also, your Honor——

The Court: Put your next question.

Mr. George C. Finn: In respect to the survey——

The Court: Put your next question, Mr. Finn.

Mr. George C. Finn: Yes, sir.

Q. (By Mr. George C. Finn): Mr. Bradley, did you state that the Defense Department requested or had a policy letter out where they would need these airplanes perhaps for the Korean war?

A. Yes, sir.

Q. And that was the basis upon which you said no restrictions could be removed from such air-

(Testimony of Edward G. Bradley.)

craft? A. That was one of the bases.

Q. That was one of the bases?

A. Yes, sir.

Q. Now, since these restrictions must be maintained pursuant to the necessary use of these aircraft, was it also required of you to obtain the information as to how many aircraft were available? A. Yes, sir.

Q. It was? A. Yes, sir.

Q. And was it also required of you that none of these aircraft be allowed to be disposed of because of such necessity? [664] A. Yes, sir.

Q. Mr. Bradley, do you remember when the Korean war started? A. I believe I do, sir.

Q. When was it, Mr. Bradley?

A. I believe it was in June, of 1950.

Q. June of 1950. You received this request when, Mr. Bradley?

A. The latter part of 1950, or the early part of 1951.

Q. The early party of 1951. It was approximately February, wasn't it?

A. I believe it was in January.

Q. In January? A. Of 1951.

Q. And the Korean war was going on all the time, but was there anything done by you to prevent any disposal of these aircraft at that time, subject to the requests by the Defense Department that they might be needed in the Korean war?

A. Yes, sir.

Q. What was done, Mr. Bradley?

(Testimony of Edward G. Bradley.)

A. In January of 1951 a memorandum was sent to our regional representatives, stating that we had concluded an agreement with the Department of Defense that any aircraft which had previously been transferred for educational purposes, [665] which was now no longer useful or necessary for educational purposes, should be reported to the Washington office, and that the Washington office would offer those planes to the Department of Defense for recapture in the prosecution of the Korean war.

Q. What type of aircraft was that, Mr. Bradley?

A. It did not distinguish. All types of aircraft that became excess to the needs of educational institutions would be reported.

Q. That is, whether they were tactical or transport?

A. Yes, sir.

Q. Do you understand the difference between tactical aircraft and transport aircraft?

A. I think I do.

Q. What is the difference, please?

A. Tactical aircraft is the type that carries armament, either for shooting or bombing purposes, and non-tactical I would say would be passenger or cargo type of aircraft.

Q. Mr. Bradley, was it your understanding at the time you followed these requests of the Defense Department that the scrap warranty arrangement still applied to the school aircraft?

A. Would you please repeat that?

(Testimony of Edward G. Bradley.)

Q. Was it your understanding that the scrap warranty restrictions still applied to the school aircraft at the time [666] this request was made in January, 1951? A. Yes, sir.

Q. It was your understanding?

A. Yes, sir.

Q. What is the scrap warranty, Mr. Bradley?

Mr. Abbott: We will object.

Mr. George C. Finn: As you understand it?

Mr. Abbott: That calls for this lay witness to give his opinion as to a matter not in evidence.

The Court: Sustained.

Q. (By Mr. George C. Finn): Is it not true, Mr. Bradley, that in the discussion that we had in your office in this meeting, that we brought up the point of reducing the airplane to its basic material content? Was that point discussed, Mr. Bradley?

A. Yes, it was.

Mr. George C. Finn: It was, wasn't it?

The Court: Did you intend to ask him what he meant when he referred to a scrap warranty? Is that what you meant to ask him?

Mr. George C. Finn: Yes, sir.

The Court: You may ask him that.

Q. (By Mr. George C. Finn): What did you mean, Mr. Bradley, by the scrap warranty?

A. When the plane was unfit for educational purposes, [667] that it should be reduced to scrap, and that it would have no further use except for its basic material content.

(Testimony of Edward G. Bradley.)

Q. What do you mean by basic material content, Mr. Bradley? What is your meaning of that?

A. It is the metal.

Q. The metal? A. In the plane.

Q. Any of the component materials of the airplanes; is that correct?

A. I don't follow you, Mr. Finn.

Q. That is, any of the basic materials of the airplane—aluminum, iron, copper——

A. Yes.

Q. ——or whatever went into its manufacture?

A. Yes.

Q. Mr. Bradley, isn't it a little inconsistent with your contention that these airplanes be reduced to their basic material content, scrap metal, and so forth, and that they were needed for the demands of the Air Force in the Korean war?

The Court: Objection sustained. Put your next question. If counsel are too lazy to make their objections, I will make my own objection. Sustained.

Q. (By Mr. George C. Finn): I will put it to you another way, Mr. Bradley: Did you do anything to prevent any [668] school from reducing any airplane to its basic material content?

Mr. Abbott: Objection, your Honor, as immaterial.

The Court: Sustained. We are not going to try the War Assets Administration. We are trying this case. It doesn't make any difference whether he did it rightly or wrongly. What we are interested in

(Testimony of Edward G. Bradley.)

is what he did. The point of fact of a policy, we are not concerned with the policy.

Q. (By Mr. George C. Finn): Mr. Bradley, you did tell me I couldn't fly this airplane because it was perhaps required under the requirement of the Defense Department, that it would be required for the Air Force; is that right?

A. No, sir. I said you could not fly the plane because the plane had been transeferred to the school for non-flight purposes, and, according to the conditions which the school signed, that when it became unfit for educational purposes it would have to be reduced to scrap.

Q. That is right.

A. That was the reason I told you that you could not fly the plane.

Q. But didn't you, Mr. Bradley, also tell me that those restrictions could not be removed because the airplane may have been required by the Defense Department?

A. No, sir.

Q. You didn't? [669]

A. There were two—

Q. Wasn't this policy letter—wasn't this a policy—

Mr. Abbott: May the witness be permitted to complete his answer?

Mr. George C. Finn: Pardon me.

The Court: You may complete your answer.

The Witness: The policy that was established toward recapture of planes was a part of our program to try to get for the Department of Defense

(Testimony of Edward G. Bradley.)

any airplane that had any value that they could use. We would submit those to the Department of Defense. They would send inspectors to where they were located, and they would report as to whether they felt that there was anything that they could use.

Q. (By Mr. George C. Finn): Well, didn't you say, Mr. Bradley, that that was the basis upon which you stated no restrictions could be removed?

A. I stated that no restrictions would be removed, basically, because of the conditions contained on the Form 65.

Q. I agree with that, but, also, wasn't it because of this policy letter? Didn't you just testify to that? Because this policy had been established that no restrictions could be removed?

A. The policy had been established that no restrictions—that we would not remove restrictions, and one of [670] the considerations was because of this agreement with the Department of Defense, that we would not transfer or permit any transfers of educational planes to commercial users until the Department of Defense had had a chance to screen that material. That was one of the considerations which probably strengthened our policy on not removing restrictions on educational planes.

Q. I agree with you, Mr. Bradley. Now, had no restrictions been removed, then the planes would have been reduced to their basic material content, would they not?

(Testimony of Edward G. Bradley.)

Mr. Abbott: Objection, your Honor. That is argumentative and speculative.

The Court: Sustained. [671]

Q. (By Mr. George C. Finn): What would have happened to an airplane if you had not removed any restrictions on it, if the school wishes to dispose of it?

Mr. Abbott: Same objection. It calls for speculation on the part of the witness what the school might have done.

The Court: Sustained.

Q. (By Mr. George C. Finn): What is your contention, Mr. Bradley——

Mr. Abbott: Same objection.

The Court: Sustained.

Mr. George C. Finn: I haven't finished.

Q. (By Mr. George C. Finn): ——as to the proper disposal of an aircraft by a school when it was no longer required for use?

Mr. Abbott: Objection, your Honor. The statute and the regulations and the agreement——

The Court: It doesn't matter what he thought about it, Mr. Finn. Sustained.

Mr. George C. Finn: All right, your Honor.

Q. (By Mr. George C. Finn): This policy that you speak of, Mr. Bradley, upon which you base one of the reasons for not removing any restrictions, was that a written statement to your office? Did you see any policy letter of that kind?

A. That was based upon discussions that we had

(Testimony of Edward G. Bradley.)

had with the Department of Defense and representatives of the Air Force [672] and the Navy.

Q. It was a discussion and wasn't written?

A. That is right. It was not a written agreement.

Q. Who established the policy? I mean, how did you know about it? Is this the normal procedure, where some Air Force man comes to your office and says, "We would like you not to do certain things, and we think this is the policy you should follow," and he leaves and you follow that?

Mr. Abbott: Objection, your Honor. The normal procedure is immaterial.

The Court: Sustained.

Q. (By Mr. George C. Finn): To your knowledge then, there was no written policy?

A. There was no written policy with respect to the recapture of aircraft for Department of Defense use.

Q. And there was nothing——

A. We established a written policy and circulated it to our representatives in the regions and the state agencies, the surplus property state agency people.

Q. Did that policy include any statement that aircraft should not be reduced to their basic material content? A. No.

Q. It did not? A. No.

Q. And this policy of recapture, Mr. Bradley, do you [673] have any knowledge of any aircraft that were recaptured?

(Testimony of Edward G. Bradley.)

Mr. Abbott: Objection, your Honor.

The Court: Sustained. Mr. Finn, these people had only such authority as Congress gave them. If Congress said, "Take them all and blow them up," that would have been their legal duty. Even if they made an order next day to build some more, that would have been their duty.

Mr. George C. Finn: I agree with that, your Honor. But when I went into this man's office I heard expressions of impossibility, these were essentially obstacles——

The Court: You hear anything in Washington. You don't assume these people are all happy, either.

Mr. George C. Finn: That is for sure. Thank you, your Honor.

Q. (By Mr. George C. Finn): Now, Mr. Bradley, as part of your testimony, you stated that the State Department did not wish these airplanes to be flown out of the country and used by any foreign country that were then adverse to the United States' interests, is that correct?

A. That is correct.

Q. Did you ever hear of Proclamation 2776?

A. I can't say that I have heard of that.

Q. But you did state that it made no difference what type of aircraft it was, tactical or transport, that the restrictions by the State Department were to be adhered to, [674] isn't that correct?

A. Yes.

Mr. Abbott: I object to that. It constitutes an erroneous——

(Testimony of Edward G. Bradley.)

The Court: It would be immaterial. If this were a congressional committee you were before that would all be very pertinent. We have to take the law as Congress makes it.

Q. (By Mr. George C. Finn): How long have you been in this courtroom, Mr. Bradley?

A. Today?

Q. Just today?

A. I asked you, you mean today?

Q. Since you arrived here in this city, how long have you been in this courtroom?

A. I believe I attended the court on, I believe it was Thursday, for the first time.

Q. Did you hear the testimony of Mr. Duly?

A. I believe I recall him being on the stand. I don't know whether I was here during all of his testimony. I didn't attend from the opening to the end of each day's session.

Q. Do you recall Mr. Duly testifying that these airplanes, these C-46s, were purchased in this country and sold in South America at an additional profit? [675]

Mr. Abbott: I object, your Honor. Whether the witness heard Mr. Duly or not is immaterial.

The Court: Sustained.

Q. (By Mr. George C. Finn): Do you have any knowledge, Mr. Bradley, of your own, or from this courtroom or otherwise, that some of these airplanes have been sold out of the country?

Mr. Abbott: I object, your Honor. It is immaterial.

(Testimony of Edward G. Bradley.)

The Court: Sustained.

Q. (By Mr. George C. Finn): Isn't it true, Mr. Bradley, just between you and I——

The Court: It can't be that way. This is a public trial.

Q. (By Mr. George C. Finn): Well, when I was in your office, the best and easiest way to handle this problem when I first presented it to you was to make these statements that the Defense Department was going to pick up the airplanes for the Korean War, that the restrictions were on them and nobody could buy them, and that you couldn't acquire title and nobody would allow them to be registered and couldn't fly them anyway if you did buy them—isn't it true that that was the first best way to solve that problem when I first presented it to you?

Mr. Abbott: I object, your Honor, as improper to form, and immaterial.

The Court: Even if he thought so, it wouldn't matter. [676] If he agreed wholeheartedly, it wouldn't matter. If Congress should say there should be established a plant out here right across from one of the aviation plants to destroy the same model plane while the aviation plant is making it, it would still be the law, and if it came into this court, the court would be required to enforce the law. You may call it ridiculous and any other adjective, but still it would be the sworn duty of this court to uphold the law.

So we are not concerned with what would be the

(Testimony of Edward G. Bradley.)

best way. A congressional committee would, but this is a court of law.

Mr. George C. Finn: We have here a question of estoppel. We have here a question of, first, we hear all kinds of negative answers, that this can't be done, and then gradually these are broken down step by step, one by one, until there is no problem at all, until there are no restrictions on the plane.

The Court: This witness can only testify to what he knows. Ask him questions about what you think he knows. He has been on the stand about four hours, I think, now, and it is about time to bring this to a conclusion.

Mr. George C. Finn: Your Honor, if this gentleman acquiesced to the situation as we all discussed it, and it was proper and official and legal, then it points to estoppel on the part of the Government.

The Court: Those "ifs" are very tall "i's" and "f's." [677]

Mr. George C. Finn: But the Government proposes, your Honor, that immediately——

Mr. Charles C. Finn: May I do a little whispering?

The Court: To your brother?

Mr. Charles C. Finn: Yes. I think I can get him back on the track.

Mr. George C. Finn: The Government proposes these were impossible restrictions that couldn't be overcome, and that I should have known better, was my reasoning from the testimony that is presented here.

(Testimony of Edward G. Bradley.)

The Court: Mr. Finn, the Government concedes that officials empowered by Congress have the power to waive or release these restrictions. Is that correct, Mr. Abbott?

Mr. Abbott: No question about it, your Honor.

The Court: But this witness says that he had no power. He knows his duties. He said he had no power to waive them. Am I correct?

The Witness: Yes, your Honor.

The Court: Or, he had no power to release them. It took a man superior in authority to him to do it. So it doesn't matter whether it is the best way or the wisest way. The question is what did they do.

Mr. George C. Finn: Your Honor, he claims to have the power to impose them.

The Court: Oh, no question about that. [678]

Mr. George C. Finn: Has the power to impose——

The Court: Has to power to enforce, that is.

Mr. George C. Finn: That is what I am getting at. If he has the power to enforce—on what basis? And he states basis of national defense——

The Court: It doesn't matter. You had just as well ask the policeman on the beat by what virtue does he keep the peace. He has the power to enforce the law, but does he have the authority to repeal the law, to wipe it out, to say to that man, "You may do it," and to another, "You may not." No, the policeman on the beat has no such power, and yet he is an enforcer. And this witness, as I under-

(Testimony of Edward G. Bradley.)

stand, was an enforcer of compliance. Is that correct?

The Witness: That is correct, sir.

The Court: Proceed.

Q. (By Mr. George C. Finn): Mr. Bradley, to your knowledge was any school plane ever sold while you were in office, in that position?

Mr. Abbott: I object, your Honor. It is immaterial whether it occurred or not.

The Court: Overruled. You may answer.

The Witness: I do not recall any plane being sold from the time that I was in the compliance section.

The Court: You were called upon to answer yes or no. Could you answer it yes or no? [679]

The Witness: Since I have no recollection of that event, I would have to say no, your Honor.

Q. (By Mr. George C. Finn): Mr. Bradley, you stated that, in this conversation in this meeting which we had with the Civil Aeronautics Administration and the Federal Security Agency, that the attorneys of the Federal Security Agency took issue with the attorneys of the Civil Aeronautics Administration.

What do you determine they took issue over?

A. Would you repeat that, please?

Q. What was the issue, Mr. Bradley, between those two sets of attorneys?

A. As I recall it, I don't believe that the Federal Security Agency lawyers were in complete agreement with the Civil Aeronautics Administra-

(Testimony of Edward G. Bradley.)

tion people on the matter of title. Now, I am not a lawyer and I cannot give you the specific issues, but I know that, as I recall it, our attorneys did not agree with the Civil Aeronautics Administration attorneys.

The Court: As to fact or as to law?

The Witness: I believe it was a legal question, your Honor.

Q. (By Mr. George C. Finn): I am not asking you as to which issue was resolved one way or what issue was resolved another way. What was the point, or points involved over which they took issue? [680]

The Court: Do you know what they were? Do you want a certain answer? Why don't you ask him if it is a fact?

Q. (By Mr. George C. Finn): Isn't it a fact, Mr. Bradley, that there were several issues involved here, in fact there were three? Isn't it a fact that one of them was a statute of limitations as to the right of the school to dispose of airplanes after three years of acquisition? Wasn't that one point?

A. That was discussed.

Q. And, Mr. Bradley, wasn't there another point concerning what scrap, whether the plane would have to be reduced to its basic material content, or whether it would be scrapped as unsalable for commercial use, or classified as scrap, or actually have the characteristics of basic material? Wasn't that one of the issues?

A. That was discussed, yes.

(Testimony of Edward G. Bradley.)

Q. And isn't it true, Mr. Bradley, that another issue was this sales receipt form, as to whether or not it constituted a formal bill of sale?

A. I cannot recall that that was ever mentioned at that meeting.

Q. Mr. Bradley, was the file available to all of us at that point?

A. The file was not examined by anybody at that meeting.

Q. You didn't produce the file at all? [681]

A. I may have had it on the desk. But the file itself was not a subject of discussion. I believe there were copies of the Form 65 circulated, and the Regulation 4 was in evidence. But I cannot recall that the Vineland School file itself was passed from hand to hand, or examined in detail by anybody at that meeting.

Q. Nobody was hiding anything, were they, Mr. Bradley?

A. No, sir.

Q. Everything was open and aboveboard, all the cards on the table, Mr. Bradley?

A. Yes, sir.

Q. There was no attempt at any surreptitious behavior on the part of any individual there, was there?

A. That is correct.

Q. Don't you recall, Mr. Bradley, that the file was available and we had access to all these documents to bring up these points as to the issues that were involved, these three issues?

A. I do not recall that, Mr. Finn.

Q. Were you involved in these documents your-

(Testimony of Edward G. Bradley.)

self? Did you partake in this discussion between the two sets of attorneys and myself?

A. I took very little part in that meeting. I believe I have stated that before.

Q. This was more or less a technical discussion with [682] a layman trying to bring out points of law to two sets of attorneys, was it not? I being the layman?

A. I don't know what you mean by the "layman."

Q. I being the layman. I was not an attorney, but the other four people were.

Mr. Abbott: We object to that as assuming facts not in evidence. There was but one lawyer from the Civil Aeronautics Administration, Mr. Howard.

The Court: The meeting has been fully described.

Mr. George C. Finn: Pardon me. There is one point that hasn't been described.

The Court: Proceed to that point.

Q. (By Mr. George C. Finn): You didn't enter into any of these technical discussions about the relationships——

The Court: He has been over all that.

Q. (By Mr. George C. Finn): Did you, Mr. Bradley?

The Witness: Would you mind finishing that?

The Court: I can answer it for him, Mr. Finn. He said no several times. Proceed to the next question.

Q. (By Mr. George C. Finn): Did you actually

(Testimony of Edward G. Bradley.)

sit back a ways and allow this discussion to go on without paying too much attention to the technicalities? A. I did not participate.

Q. Thank you.

A. Because it was in a field in which I have no competence. [683]

Q. Was it possible, Mr. Bradley, for this sales receipt to be discussed without you really knowing anything technically about it?

Mr. Abbott: I object, your Honor. The question doesn't identify the document.

The Court: Sustained.

Mr. George C. Finn: May I identify the document?

The Court: It has been asked and answered. Haven't you asked him that?

Mr. George C. Finn: I don't think anybody asked him if it is possible that sales receipt——

The Court: Anything is possible. I could answer that for him. Anything is possible.

Mr. George C. Finn: Without his knowledge about it.

The Court: Is it possible for some other document to have been discussed without your knowing about it?

The Witness: It is possible, your Honor, yes.

Mr. Charles C. Finn: May I interject here, your Honor? I think—I believe that the witness stated that the sales receipt was not in evidence at the discussion. I think there was a definite statement to that effect.

(Testimony of Edward G. Bradley.)

The Witness: I said I had no recollection of a sales document being discussed at that meeting.

The Court: Or being in evidence. [684]

The Witness: Or of being in evidence. And your Honor asked me if it would be possible if I would have a recollection. I said I could not recall.

Q. (By Mr. George C. Finn): But do you recall that it was not there?

A. But it could have been discussed without me knowing it. That is possible.

Mr. George C. Finn: Thank you, Mr. Bradley.

Mr. Charles C. Finn: May I ask, that he either knew or did not know of his own knowledge there was such a sales receipt at that meeting?

The Court: You have heard his answer.

Mr. Charles C. Finn: It wasn't express. He said he had no—well, that is right.

Q. (By Mr. George C. Finn): Mr. Bradley, did we also discuss the policy letter or a policy letter between the Federal Security Agency and the Civil Aeronautics Administration at that meeting?

A. We did not discuss a policy letter, to my recollection, at all.

Q. Do you recall my making a statement, "Gentlemen, make up your mind whether you are going to follow the regulation or policies or agreement, or what"? Do you remember such a statement, Mr. Bradley?

A. I cannot recall that statement, Mr. Finn.

Q. Can you say that it was not made?

A. I can't say that it was, or that it was not.

(Testimony of Edward G. Bradley.)

Q. Thank you. Who took your place, Mr. Bradley, when you were relieved?

A. A man by the name of Lawrence took over my duties when I left. As a matter of fact, when I left, the position was split into two parts. I was handling not only the aircraft disposals, but also all personal property compliance matters, and all real property compliance matters.

When I left the real property compliance matters were handled by a gentleman who handled real property disposals, and a gentleman by the name of Lawrence, William Lawrence, handled the personal property and aircraft compliance matters.

Q. Do you know Mr. Frazier? A. I do.

Q. What was Mr. Frazier's position, Mr. Bradley?

A. Mr. Frazier is chief of the Surplus Property Utilization Division.

Q. Did you ever discuss this case with Mr. Frazier? A. I don't believe I did.

Q. At no time?

A. I did not discuss this case with Mr. Frazier between January of 1951 and June of 1951. My immediate supervisor was Mr. Baxter. Mr. Baxter was the chief of the Surplus Property Utilization Division. [686]

Q. Did Mr. Frazier ever ask you for any information concerning this case, the disposal of this subject aircraft in suit?

A. When Mr. Frazier took over the position as director or chief of the Division, he did ask me what

(Testimony of Edward G. Bradley.)

took place at some of the meetings that took place—some of the meetings that we had in connection with this request of yours for clearance of the restrictions.

Q. When did Mr. Frazier ask you about this?

A. Well, probably the latter part of 1951, I believe.

The Court: Had you discussed it with Mr. Baxter before that?

The Witness: Yes, sir.

The Court: On more than one occasion?

The Witness: I reported verbally to Mr. Baxter each meeting with Mr. Finn.

Q. (By Mr. George C. Finn): You say the latter part of 1951. Were you then in your position—you were not then in your position as—

A. No, sir, I was with another program at the time.

Q. And Mr. Frazier looked you up, did he, and asked you about this?

A. I think that is a good description.

The Court: What did he say to you about it?

The Witness: Well, he wanted to know what conclusion—— [687]

The Court: Did he say how he happened to inquire?

The Witness: Well, because Mr. Frazier had taken over the position as chief of the Division.

The Court: Chief of what division?

The Witness: Chief of the Surplus Property Utilization Division.

(Testimony of Edward G. Bradley.)

The Court: And he had just taken that position over?

The Witness: Yes, sir.

The Court: What had been his position previously?

The Witness: Well, he was working in the Surplus Property Division, but he was not chief of the Division.

The Court: Was he superior to Mr. Baxter?

The Witness: No, sir, he was under Mr. Baxter.

The Court: So when you reported to Mr. Baxter, you were reporting to——

The Witness: To my superior.

The Court: And his office was what?

The Witness: He was chief of the Surplus Property Utilization Division.

The Court: And then Mr. Frazier succeeded to what?

The Witness: Mr. Frazier succeeded to chief of the Surplus Property Utilization Division when Mr. Baxter transferred to another program.

The Court: And Mr. Frazier looked you up?

The Witness: Yes, sir. [688]

The Court: Did he tell you why he happened to be inquiring about this transaction?

The Witness: Well, I think that it came about as a result of a newspaper article that appeared with respect to this aircraft. I am not real sure of that. But he did inquire as to what the conversations were with respect to "your meetings" in Washington with me, and also with the legal people

(Testimony of Edward G. Bradley.)

from the Federal Security Agency and from the Civil Aeronautics Administration.

The Court: Did he say anything to you about the registration of the aircraft at that time?

The Witness: Yes, sir, he told me that the plane had been registered.

The Court: By the Civil Aeronautics Administration?

The Witness: Yes, sir.

Q. (By Mr. George C. Finn): What did you say to him, Mr. Bradley?

A. Well, frankly, I can't recall what I said to him.

The Court: You reported to him what you knew at the time of what had transpired?

The Witness: I gave him a summary of what took place at the meeting with Mr. Finn and myself, and in the meeting of the lawyers when Mr. Finn was present.

Q. (By Mr. George C. Finn): You reported this meeting we had prior to the airplane being registered, and told him [689] the whole story about that meeting; is that right?

A. As closely as I could.

The Court: Now, do you want to ask him what he said?

Mr. George C. Finn: Yes.

The Court: About anything he intended to do about it after he knew the airplane was registered?

Mr. George C. Finn: Yes.

The Court: That is your question. Ask him.

(Testimony of Edward G. Bradley.)

Q. (By Mr. George C. Finn): Specifically, what did you say to Mr. Frazier, and what did he say to you as to what he might do?

The Court: Let's not be that broad. Let's pin it down.

Q. (By Mr. George C. Finn): What did you say to Mr. Frazier?

The Court: No, the important thing is what did Mr. Frazier say to him.

Q. (By Mr. George C. Finn): All right. What did Mr. Frazier say to you?

The Court: As to what he intended to do about this airplane, knowing that it had been registered as a commercial aircraft by the Civil Aeronautics Administration.

Mr. George C. Finn: I will adopt that question of the court. Please answer it.

The Witness: Mr. Frazier, as I recall it, said that he was forwarding the matter to the legal division, and asking [690] that they take appropriate action in the case—the legal division of the Federal Security Agency.

Q. (By Mr. George C. Finn): Did he state what appropriate action he meant?

A. No, I don't think he did, because the appropriate action——

The Court: No, not what you think. It would be what he said.

The Witness: No, he did not clarify the term "appropriate action."

Q. (By Mr. George C. Finn): And this meet-

(Testimony of Edward G. Bradley.)

ing took place in the latter part of 1951; is that correct? A. Some time along in there.

Q. Did you have any further discussion with Mr. Frazier regarding this matter?

A. I don't believe so. I didn't see Mr. Frazier very often. I was in another part of the building, and I was not in the program any longer.

The Court: Did you ever discuss this matter with anyone superior to Mr. Frazier?

The Witness: No, sir.

Q. (By Mr. George C. Finn): Did you discuss this matter with the Justice Department, after it had been referred to them, or prior to that?

A. No, sir. [691]

Q. You had never discussed this matter at all with any member of the Justice Department?

A. I have never discussed this matter with anybody in the Justice Department until one week ago, when I came to Los Angeles.

Q. Did you discuss this matter with any other department of the Government, or any other related department of the Government, in regard to this aircraft in this suit? A. No, sir.

Q. Did you ever make an affidavit, Mr. Bradley?

A. Yes, sir.

Q. When did you make the affidavit?

A. I believe it was sometime in 1952.

Q. Can you give me the approximate time?

The Court: Do you have the affidavit?

Mr. George C. Finn: I don't have the affidavit,

(Testimony of Edward G. Bradley.)

your Honor. I just know about it. It was read by the plaintiff while I was on cross-examination.

The Court: Do you have the affidavit to which he refers, Mr. Abbott?

Mr. Abbott: I have in my office an affidavit executed by the witness, your Honor.

The Court: Do you wish it?

Mr. George C. Finn: May I have it, your Honor?

The Court: Yes, it will be produced. Let's finish with [692] this witness. We will be here another week if this keeps up.

Mr. George C. Finn: This witness is important, your Honor.

The Court: All witnesses are important. Proceed.

Q. (By Mr. George C. Finn): Mr. Bradley, this was, you say, in June of 1952?

A. It was—I believe it was in May, of 1952.

Q. In May?

A. I am not—I believe Mr. Abbott has a copy of it.

Q. What caused you to make this affidavit, Mr. Bradley?

A. One of the lawyers in the Federal Security Agency suggested that it might be well that I refresh my memory about what occurred during the various meetings that took place, and that I set forth my recollection of those meetings in the form of an affidavit, and I did that. [693]

Q. What lawyer, Mr. Bradley?

(Testimony of Edward G. Bradley.)

A. I don't recall the name of the lawyer, Mr. Finn, I am sorry.

Q. You don't recall his name, but do you know for certain that he was a member of the Federal Security Agency?

A. Yes, he was in the legal division of the Federal Security Agency.

Q. Had you known him before that?

A. Yes.

Q. Was he a member of the forty attorneys you had with the Federal Security Agency?

A. He was a member of the legal division of the Federal Security Agency.

Q. But it was not Mr. Hiller or Mr. Davidson?

A. No, it was not.

The Court: Has the Government furnished you with the affidavit——

Mr. George C. Finn: Yes, your Honor.

The Court: ——made by the witness, or a copy of it?

Do you wish to offer it in evidence?

Mr. George C. Finn: First, your Honor, I wish to see a point here.

Q. Mr. Bradley, did you ever make the statement in an affidavit or to anyone that I offered you \$2,000, two to three thousand dollars, to obtain a sales receipt from you? [694] A. Yes, sir.

Mr. Abbott: Objection, your Honor. The inquiry is improper unless the document to which Mr. Finn refers is placed before the witness.

Mr. George C. Finn: Your Honor, I don't know

(Testimony of Edward G. Bradley.)

whether this is the document or not. It is an original. On the first page——

The Court: The witness testified this morning something about an offer to pay the Government two or three thousand dollars, didn't he?

Mr. George C. Finn: Your Honor, there is a question about that. He did testify to it, and I remember his words precisely. First, I must find the affidavit, and the first statement he made as to such a thing——

The Court: Why do you need the affidavit unless it is inconsistent with the affidavit?

Mr. George C. Finn: It is inconsistent, but I need the affidavit to bear it out.

The Court: Do you have another affidavit?

Mr. Abbott: Your Honor, I have just given to Mr. Finn the only affidavit by the witness which I know of. If Mr. Finn believes there is another affidavit, he can ask him.

Q. (By Mr. George C. Finn): Let me ask you, Mr. Bradley, did you sign any affidavit in the original?

The Court: Let's ask him first if he made more than one [695] affidavit connected with this case.

Q. (By Mr. George C. Finn): Did you make more than one affidavit, Mr. Bradley?

A. No, sir.

Q. You haven't made more than one. The affidavit which you did sign, Mr. Bradley, where was that signed?

A. It was signed in Washington.

(Testimony of Edward G. Bradley.)

Q. Was it acknowledged?

A. What do you mean by "acknowledged"?

The Court: If it weren't, it would not be an affidavit.

Q. (By Mr. George C. Finn): Was it sworn—
acknowledged by a notary? A. I don't know.

Q. Do you recollect a notary acknowledging your signature?

The Court: Let's not waste any time with that sort of thing.

Mr. George C. Finn: Your Honor, this is important.

The Court: If it were not subscribed and sworn to before a notary, it would not be an affidavit. It would be a simple statement.

Mr. George C. Finn: Maybe that is what it is.

The Court: If it isn't here——

Mr. George C. Finn: I have an affidavit here.

The Court: Then put it before the witness, if you wish, [696] and ask him a question about it.

Mr. George C. Finn: Your Honor, I would like to ask him what he knows.

The Court: If he made an affidavit, that means he signed something and swore to it before a notary public.

Q. (By Mr. George C. Finn): Mr. Bradley, was that an original typewritten copy, or was it a carbon copy, or was it an original?

Mr. Abbott: May it please the court: I have given Mr. Finn a copy. It may be a duplicate-original. I went over to see, and he doesn't desire me

(Testimony of Edward G. Bradley.)

to see it. I don't know, and it may be a duplicate-original, and it may be only a carbon copy. If the original document itself is important, it is in my office, and I will bring it down.

Mr. George C. Finn: Your Honor, that is what I am asking for.

The Court: If there is anything on it that amounts to anything, let's have it. Counsel is willing to stipulate it is a copy of the original, and you can proceed just as well as though you had the original before you.

Mr. George C. Finn: Your Honor, I do not stipulate that this is a copy of the original.

The Court: Then get the original.

Mr. George C. Finn: Fine. I would like to have the original because, as the original was read to me—— [697]

The Court: Now, you will continue. Send for the affidavit immediately, Mr. Abbott.

Proceed with the examination.

Mr. Abbott: May I examine the document Mr. Finn has, to see if it is a duplicate-original? It may be.

The Court: You may.

Proceed, Mr. Finn.

Mr. Abbott: It appears to be a duplicate-original.

The Court: If you would show it to the witness, perhaps that would expedite the matter.

Mr. George C. Finn: Your Honor, I have a

(Testimony of Edward G. Bradley.)

purpose for not showing it to the witness at the moment.

The Court: Very well. Put your next question. Let's proceed with the examination.

Q. (By Mr. George C. Finn): Mr. Bradley, did you ever see a policy letter regarding the disposal of school aircraft between the Federal Security Agency and the Civil Aeronautics Administration?

A. No, sir, I never saw a policy letter.

The Court: "No, sir," is the answer, is that it?

The Witness: Yes, your Honor.

The Court: Make the answers just as short as possible, and we will get along faster, Mr. [698] Bradley.

Mr. George C. Finn: May I have the policy letter which was submitted to me on the witness stand?

The Court: I haven't seen any. What exhibit is it you are speaking of?

Mr. George C. Finn: The plaintiff produced two letters which the clerk separated, one of them allegedly a policy letter.

The Court: Is there any such exhibit, Mr. Abbott?

Mr. George C. Finn: Relating to the Civil Aeronautics Administration.

Mr. Abbott: There is a document——

The Court: Find it, and let's move along.

Mr. Abbott: ——Plaintiff's Exhibit 11, a letter

(Testimony of Edward G. Bradley.)

dated January 2, 1952, to which Mr. Finn may be referring.

The Court: I am going to conclude this examination very rapidly, gentlemen, so you had better get your questions in order. This isn't going on but ten minutes longer.

Mr. George C. Finn: Your Honor, this goes to the credibility of the witness.

The Court: Proceed. If you are going to be a lawyer, what I am going to have to do is to treat you at least half way as I would any other lawyer. I can't give you over twice as much latitude as I would give a lawyer. Now put your next question.

Mr. George C. Finn: I wanted these [699] documents.

The Court: What are the exhibit numbers, Mr. Abbott?

Mr. Abbott: Of the document being examined by the witness?

The Court: That is what we are speaking of, isn't it?

Mr. Abbott: 11, your Honor. Plaintiff's 11.

The Court: Do you have Exhibit 11 before you, Mr. Bradley?

The Witness: Yes, sir.

The Court: Have you examined it?

The Witness: Yes, sir.

The Court: What is your question about?

Q. (By Mr. George C. Finn): Mr. Bradley, have you ever seen that letter? A. No, sir.

Q. Did Mr. Frazier in his conversation ever re-

(Testimony of Edward G. Bradley.)

fer to that letter? A. No, sir.

Q. Was that letter—you can examine the date on it, Mr. Bradley, and the context of it—to your knowledge, did such a policy exist between your agency and the Civil Aeronautics Administration at the time you were the compliance officer?

A. Would you please repeat the question?

The Court: When you were in the office, did such a policy exist, as expressed in that letter, Exhibit 11, if you [700] know?

The Witness: Yes, sir; such a policy did exist.

Q. (By Mr. George C. Finn): Was that policy in that letter, Mr. Bradley? Was that letter the policy upon which you base your answer?

A. Not this letter, no, sir.

Q. Not that letter? A. No, sir. [701]

Q. What letter do you base your answer on, Mr. Bradley?

Mr. Abbott: Objection. It assumes a fact not in evidence.

The Court: Sustained. He hasn't said there was such a letter.

Q. (By Mr. George C. Finn): Mr. Bradley, was there a letter establishing such a policy, to your knowledge?

A. I do not know that there was a letter.

Q. How was the policy established?

The Court: He has testified it was established by agreement between the departments. You have been into once, and you asked him if a representative of the Air Force, or some division of the Gov-

(Testimony of Edward G. Bradley.)

ernment, walked through and said, "Do you want to do so and so? And you are going to do so from now on." We have been over that since lunch.

Mr. George C. Finn: That was a different policy, your Honor, established by the Defense Department for the recapture of aircraft.

The Court: Is this a different policy?

Mr. George C. Finn: Yes, sir.

The Court: Very well. I am sorry. Go ahead.

Q. (By Mr. George C. Finn): This particular policy, Mr. Bradley, how was it established?

A. It was established by a verbal agreement between the Office of Education in the Federal Security Agency and [702] the Civil Aeronautics Administration.

Q. Who in that agency, Mr. Bradley, to your knowledge, established such a policy. How did it come about?

A. I don't know. I didn't work for the Office of Education. I knew they had an agreement of some months standing with the Civil Aeronautics Administration, that CAA would not register educational aircraft.

Q. You knew, however, that such a policy existed, that they would not register school aircraft at the CAA? A. Yes, sir.

Q. Is there any reason for such a policy, Mr. Bradley?

Mr. Abbott: Objection, your Honor. The reason is immaterial.

The Court: Sustained.

(Testimony of Edward G. Bradley.)

Q. (By Mr. George C. Finn): Upon what would you base the necessity of such a policy, Mr. Bradley?

Mr. Abbott: The same objection, your Honor.

The Court: Sustained.

Q. (By Mr. George C. Finn): Do you know for a fact, Mr. Bradley, that such a policy existed?

A. Yes.

Q. How do you know?

A. By conversation with the Office of Education people.

Q. Pardon?

A. In conversation with people in the Office of Education [703] at that time, who were charged with requirements for compliance of educational aircraft.

Q. You said "people." Who were they, Mr. Bradley?

A. Well, one gentleman had charge of that in the Office of Education.

Q. What was his name?

A. His name was Colonel Dunn.

Q. Was Colonel Dunn with the Agency when you were in your office, in that branch?

A. Yes, he was with the Office of Education. That is a constituent agency of the Federal Security Agency.

Q. Did Colonel Dunn ever discuss this policy with you, Mr. Bradley?

A. To which policy are you referring?

(Testimony of Edward G. Bradley.)

Q. This policy whereby the Federal Security agreed with the CAA that they would not register any school airplanes?

A. Yes, he did discuss that.

Q. He discussed it with you? A. Yes.

Q. What was that discussion, Mr. Bradley?

A. Colonel Dunn related to me that the Office of Education felt that school aircraft, because of the restrictions, should not be flown, and that when they had served their purpose they should be scrapped, and he said in view of [704] that the Office of Education had come to a verbal agreement with the Civil Aeronautics people that CAA would not register any educational planes.

Q. Did you ever discuss this agreement with the Civil Aeronautics Administration?

A. I don't believe I did.

Q. Do you know who in the Civil Aeronautics Administration established the policy on their side?

A. I don't know. This was a conversation between Colonel Dunn and the CAA, to which I was not a party.

Q. Do you know that the Civil Aeronautics Administration agreed with Colonel Dunn?

A. They did, yes.

Q. How do you know that, Mr. Bradley?

A. Because CAA referred you to the Federal Security Agency when you went to get a registration.

Q. Is that the only knowledge you have that they agreed not to register the plane?

(Testimony of Edward G. Bradley.)

A. It is the only concrete knowledge I have.

Q. Isn't that an assumption, Mr. Bradley, on your part?

The Court: Argumentative. Sustained. I give you two more minutes on this examination.

Mr. Charles C. Finn: May I——

The Court: You may. The only reason I limit you is we are just getting nowhere. [705]

Mr. George C. Finn: I have a point here, your Honor, which I wish to bring out.

The Court: Ask him a question. You are asking the witness what the truth as to facts is, and you don't have to be clever about it. Just ask him as to the facts.

Mr. George C. Finn: I am not being clever, your Honor. I am just asking——

The Court: I mean, if you want to bring it out, ask him a question about it.

Mr. George C. Finn: Mr. Bradley, in this meeting we had in your office you stated that the Civil Aeronautics attorney and the registrar of aircraft were present; is that correct?

A. That is correct.

Q. And that the attorney stated that the Finns had a registerable interest in the aircraft?

Mr. Abbott: Objection, your Honor, unless Mr. Finn will clarify which attorney is identified.

Mr. George C. Finn: Mr. Howard, the Civil Aeronautics attorney.

The Witness: Mr. Howard did make that statement.

(Testimony of Edward G. Bradley.)

Q. (By Mr. George C. Finn): He made that statement, and at that time you knew of the policy not to register an aircraft; is that correct?

A. Yes, sir. [706]

Q. Mr. Bradley, can you tell me why the policy was not followed?

A. No, I can't tell you why.

Q. Wasn't it, Mr. Bradley, because of the discussion that we had in your office with your agency and the Civil Aeronautics Administration present? Wasn't that the reason they registered the airplane?

A. You will have to give me more on that, Mr. Finn. I don't believe I quite understand what you want.

Q. You will admit the policy was not followed; the Civil Aeronautics Administration did register the airplane.

A. That is right.

The Court: You want to know why they did register it?

Mr. George C. Finn: Your Honor, I want to know if he knows, or is it his opinion, or to his knowledge, was the result of the meeting that we had in his office discussing all these facts the reason that the Civil Aeronautics Administration decided to go against the policy.

The Witness: I would say that it was not the result of the meeting, Mr. Finn.

Q. (By Mr. George C. Finn): Do you have any opinion what it was a result of?

A. I do not.

(Testimony of Edward G. Bradley.)

Q. Now, Mr. Bradley, it is a long time ago, isn't it——

The Court: You are beyond your two-minute limit, now. [707] Let's proceed. We all know it is a long time ago.

Mr. George C. Finn: I would like to refresh——

The Court: He has been on the stand long enough. He could have thought it over a long time.

Mr. George C. Finn: Don't you recall——

The Court: You are doing like most lawyers do on cross-examination. You won't leave good enough alone.

Q. (By Mr. George C. Finn): Don't you recall, Mr. Bradley, that we had a final issue here as to the fact that Form 35 did not coincide with the Form 65, and that the Form 35 coincided with a rescinded regulation, and the Form 65 reactivated the rescinded regulation? You remember that as part of our discussion?

A. At which meeting was that, Mr. Finn?

Q. At our conference.

A. My recollection is that the Form 35 was not discussed at the meeting with the lawyers.

Q. Do you recall my coming to you, Mr. Bradley, and saying to you, "Why doesn't this coincide with the Regulation"?

A. Which one are you talking about?

Q. This Form 65 doesn't coincide with the Regulation.

(Testimony of Edward G. Bradley.)

A. I recall you stated there was a difference in the language.

Q. And weren't you and I at the special meeting? That [708] is, I came to your office alone, subsequent to the conference? A. Yes, you did.

Q. That is right. Do you remember which way your desk was facing, Mr. Bradley? Wasn't it facing the door of that office?

The Court: Let's don't go into that.

Mr. George C. Finn: This is important, your Honor.

The Court: It doesn't make any difference whether he had a desk or not.

Mr. George C. Finn: It does in this case, your Honor.

The Court: I will cut off your cross-examination if you don't abide by the rules of conduct.

Q. (By Mr. George C. Finn): Mr. Bradley, when we entered this discussion, I asked you, "Why doesn't this comply? This Form 65 just doesn't comply with the regulations." You recall that?

A. Yes.

Q. And you admitted that it didn't didn't you?

A. Yes, I said there was a difference in language.

Q. That is correct. Didn't you pull out of the middle drawer of your desk a tissue paper document and say, "Well, this may have some bearing on the matter"?

I asked you, "What's that?"

And you said, "Well, this is a jacket that went

(Testimony of Edward G. Bradley.)

to the printer in order to make up this [709] form."

Do you recall this conversation? This is a long time ago, now, I realize that.

The Court: You aren't permitted just to rub down the witness, so to speak, to try to get him to remember. You asked him whether he remembered or not.

Q. (By Mr. George C. Finn): Don't you remember this tissue paper, Mr. Bradley?

A. I do not recall.

Q. Now, I was in a hurry, and you sent it down to the photostater, and he photostated it, and I came back an hour later, and you recall that you said, "It is not a very good photostat. It shoots right through the paper." And it was a little garbled on the front because the thing was so thin.

The Court: You asked him about 40 questions in one. Which one do you want answered?

Q. (By Mr. George C. Finn): Do you recall this, Mr. Bradley?

A. I do not recall the incident.

Q. Do you recall ever making a photostat for me at all? A. Yes, sir.

Q. That was the photostat of the Form 65?

A. Yes, sir.

Q. Do you recall making the photostat of the Form 35, the jacket that was sent to the printer?

A. No, sir, I do not. [710]

Mr. George C. Finn: Thank you. Your Honor, I would like to have had time to go into this affidavit.

(Testimony of Edward G. Bradley.)

The Court: You will be given time when we get the original here. Counsel says it is a duplicate original that you have. Are you willing to accept that?

Mr. George C. Finn: No, your Honor, on the basis of the question that was asked me on the stand, stating I offered Mr. Bradley \$2,000 or \$3,000 for a bill of sale.

The Court: You heard his testimony this morning.

Mr. George C. Finn: That has nothing to do with the affidavit, your Honor, I believe. I have——

The Court: The witness says he has made one affidavit. Do you have any information he has made more than one?

Mr. George C. Finn: No, your Honor.

The Court: Very well. You have in your hand what the Government says is a duplicate original of that affidavit. Do you have any information to the contrary?

Mr. George C. Finn: My recollection is that——

The Court: I don't want to hear that. You aren't on the stand testifying. If you want to testify you will take the stand.

Mr. George C. Finn: My information to the contrary comes from this statement——

The Court: I don't want to hear it.

Mr. George C. Finn: That the [711] statement——

The Court: Do you contend there is another affidavit?

(Testimony of Edward G. Bradley.)

Mr. George C. Finn: I contend the statement made to me is not in this affidavit.

The Court: It may not be.

Mr. George C. Finn: It was purported to be in this affidavit, your Honor.

The Court: Any further questions of this witness?

Mr. George C. Finn: Plaintiff allegedly read from the affidavit. Now, I don't find that statement——

The Court: Did Mr. Abbott ask you the question?

Mr. George C. Finn: Yes, your Honor.

The Court: Take it up with him at the recess. You gentlemen can speak to each other.

Mr. Abbott: This affidavit——

The Court: I don't want to hear about it, now. Speak to each other at the recess about it.

Any further questions of this witness?

Mr. Abbott: The government has some questions.

The Court: There will be no recess until we finish with this witness.

Redirect Examination

By Mr. Abbott:

Q. Will you please state, Mr. Bradley, what duties you had as Chief of the Compliance Section, in addition to the [712] duties relative to the surplus property in the possession of the school districts? Be brief, sir.

(Testimony of Edward G. Bradley.)

A. I handled real property transactions, that is, compliance cases where schools or hospitals wished to remove some of the restrictions that were placed upon the disposal of real property, and also any requests from schools or hospitals with regard to the usage of personal property, and also any aircraft matters that came up.

Q. Can you estimate the total amount of your time consumed in handling aircrafts matters relating to educational disposal while you were Chief of the Compliance Section?

A. I would say that the real property transactions took better than 50 per cent of the time, and——

Q. Well—pardon me. Go ahead.

A. ——aircraft disposal and the other personal property disposal matters took the balance of the time.

Mr. Abbott: Will the clerk please place before the witness Plaintiff's Exhibits 5 and 12.

Q. (By Mr. Abbott): While the clerk is searching for those, can you state whether you made any notation, mental or otherwise, of the serial number on the bill of sale displayed to you by Mr. Finn, in the course of your meetings with him?

A. No, sir, I did not.

Q. Will you examine Plaintiff's Exhibits 5 and 12? [713] Exhibit 5 relates to the plane in suit and Exhibit 12 relates to the hulk. Will you please state whether, from that examination, you can state if either one of those was the bill of sale displayed, and if so, which?

(Testimony of Edward G. Bradley.)

A. I cannot state which bill of sale was shown to me by Mr. Finn. It was either one or the other. I do not know.

Q. Mr. George Finn has testified that the meeting with the several attorneys occurred on April 4, 1951. Do you have any reason to question the accuracy of that date, Mr. Bradley?

A. No, sir, I have not.

Q. Now, calling your attention to the dates of the two bills of sale, Plaintiff's Exhibits 5 and 12, can you tell, from an inspection of those two documents, which, if either of them, might have been the document shown to you in the course of your meetings with Mr. Finn?

The Court: "Might" have been? He says either one of them might have been. That doesn't advance you anywhere.

Q. (By Mr. Abbott): Or was furnished——

The Court: "Was." Can you tell now which it was, Mr. Bradley? Was it Exhibit 5 or was it Exhibit 12?

The Witness: Since the meeting was held on April 4, 1951, I would assume that any bill of sale shown to me would have to be dated prior to that time. It appears that Exhibit 12 has a date prior to the date of the meeting with Mr. Finn.

Q. (By Mr. Abbott): Can you state whether or not Exhibit [714] 5 could have been the bill of sale displayed to you, Mr. Bradley?

A. It could have been, sir.

(Testimony of Edward G. Bradley:)

Q. Have you examined the date on that document? A. Yes, sir.

Q. After an examination of that date, what is your testimony as to whether or not that could have been—and by “that” I mean Exhibit 5—the document displayed on April 4, or prior thereto?

I am referring to the date upon the photostatic document, not the certification, sir.

A. Which date?

The Court: The date is February 28th, isn't it?

Mr. Abbott: April 14th.

The Court: The bill of sale is dated February 28th.

Mr. Abbott: Effective February 28th, but signed and subscribed on April 14th.

The Court: It speaks for itself, doesn't it?

Mr. Abbott: On its face.

Q. (By Mr. Abbott): How many files relating to educational disposal were there in your office at the time of your meeting with Mr. Finn?

A. I would estimate approximately six or seven hundred files.

Q. In your normal transactions with persons who [715] requested release of restrictions relative to aircraft in the hands of school districts, was it necessary to refer to the files? A. No, sir.

Q. Was that ever done, except in the transaction with Mr. Finn?

A. Not while I was there, sir.

The Court: Will the clerk please place before

(Testimony of Edward G. Bradley.)

the witness Plaintiff's Exhibit 14 for identification, a document previously displayed to counsel?

Q. (By Mr. Abbott): Does that document represent a monument of the policy or part of the policy to which you have testified, sir?

A. It does, sir.

Mr. Abbott: May Plaintiff's Exhibit 14 be admitted in evidence, your Honor?

The Court: Any objection?

Mr. Blackman: I don't know what the description of that would be. May I have it identified before it is offered in evidence?

Mr. Abbott: Plaintiff's Exhibit No. 14 is the letter from Mr. Wisner of the Department of Defense to Mr. Larsen, General Services Administrator, dated February 28, 1948.

The Court: It doesn't appear to be on this list of exhibits, as I have it. [716]

Mr. Abbott: It has been marked this morning.

The Court: Very well. Is there objection to the offer? Received in evidence.

(The document referred to, marked Plaintiff's Exhibit 14, was received in evidence.)

Mr. Abbott: Will the clerk please place before the witness Plaintiff's Exhibit 15 for identification?

Mr. Nelson: If the court please, we have no objection to the offer in evidence, but there was a question as to whether this is the policy. I am a little confused as to which policy we are referring to, inasmuch as we have had so many of them.

(Testimony of Edward G. Bradley.)

Mr. Abbott: The document will speak for itself.

The Court: Haven't you seen the document?

Mr. Nelson: Perhaps I did earlier this morning. But if I have just a statement as to which one it is, that will be satisfactory.

Mr. Abbott: Plaintiff's Exhibit 14 is a letter from Mr. Wisner of the Department of Defense to Mr. Larsen, General Services Administrator, dated February 18, 1948.

Q. (By Mr. Abbott): Have you examined Plaintiff's Exhibit 15 for identification, Mr. Bradley?

A. Yes, sir.

Q. Have you seen that document before, sir?

A. I have, sir. [717]

Q. When? A. In January of 1951.

Q. Does that document constitute a monument of the policy of the Federal Security Administration relating to the screening of aircraft for military use as that policy existed in April, 1951?

A. It does.

Mr. Abbott: We offer in evidence Plaintiff's Exhibit 15, your Honor.

The Court: Is there any objection?

Received in evidence.

(The document referred to, marked Plaintiff's Exhibit 15, was received in evidence.)

Q. (By Mr. Abbott): From your examination of the pictures of an airplane displayed to you by Mr. George Finn, did you form any opinion as to

(Testimony of Edward G. Bradley.)

whether or not that airplane could be readily placed in a flyable condition?

Mr. Blackman: Just a moment. If the court please, I don't know what "readily placed in a flyable condition" means. It is vague and indefinite. It calls for a conclusion of a witness not qualified to express an opinion.

The Court: Sustained.

Q. (By Mr. Abbott): From the examination of the pictures displayed by Mr. Finn to you, did you form an opinion as to whether the aircraft so portrayed would be one which could [718] be readily used by a military establishment pursuant to the policy you described?

Mr. Blackman: Same objection.

The Court: Sustained.

Q. (By Mr. Abbott): Do you have, as a part of your official duties, as those duties existed in April, 1951, any power to control the action of the Civil Aeronautics Administration?

A. None whatsoever.

Q. Did, at that time, any of your superiors have any power to control the action of the Civil Aeronautics Administration?

A. Not that I am aware of.

Q. And by "superiors," I mean those within the Federal Security Agency. Did you so understand the question? A. Yes, sir.

Q. Did you witness any conversation between the lawyers representing the Federal Security Administration and Mr. Howard relative to Mr.

(Testimony of Edward G. Bradley.)

Howard's declaration as to registerable interest in the aircraft described by Mr. Finn?

A. I did hear that statement.

Q. What in particular did Mr. Hiller and Mr. Davidson, the Federal Security Administration lawyers, say on that subject to Mr. Howard?

A. As I recall it from Mr. Hiller and Mr. [719] Davidson, did not agree there was a registerable interest.

The Court: Your next question?

Q. (By Mr. Abbott): Was anything else said on that point, sir?

The Court: Haven't we been over it once? I think it has probably been two or three times.

Mr. Abbott: We have, your Honor.

Q. (By Mr. Abbott): If a notice from the General Services Administrator, pursuant to your organic law, had been given relative to any aircraft in the possession of Vineland Elementary School District, would you be aware of that notice, if given during the period when you occupied the position of Chief of the Compliance Section?

A. Yes, I would have known.

Mr. Abbott: Your Honor, there has been some reference to a sale of an aircraft at San Luis Obispo. The court had instructed the Government to secure the facts relative to that transaction and propose a stipulation. We are prepared to do so at this time.

The Court: Have you discussed it with counsel outside of court?

(Testimony of Edward G. Bradley.)

Mr. Abbott: I have not, your Honor.

The Court: Don't bring any of these matters here until you gentlemen discuss them outside of court. We had that agreement at the pretrial proceedings, as I understood. [720] Anything further? What about this affidavit that was discussed. Is the original here?

Mr. Abbott: I have the original, your Honor.

The Court: Do you wish to see it, Mr. George Finn?

Any further questions of Mr. Bradley?

Mr. Blackman: I have just a very few, your Honor.

The Court: Very well. We will have no recess until we finish with this witness. If they are worth delaying the recess for, you may proceed.

Recross-Examination

By Mr. Blackman:

Q. You were asked by Mr. Abbott, whether or not you had any power to control the action of the Civil Aeronautics Administration, and you said you did have none; is that right?

A. That is right, sir.

Q. But you did have it within your power to send over to the Civil Aeronautics Administration a copy of the War Assets Form 65, Plaintiff's Exhibit 1 for identification, did you not?

(Testimony of Edward G. Bradley.)

Mr. Abbott: That question assumes an erroneous state of the record. There has been no such testimony.

Mr. Blackman: What testimony?

Mr. Abbott: Furthermore, the question, your Honor, is improper in form, and is [721] immaterial.

The Court: It is improper in form. Sustained.

Do you wish to ask him if there was any reason why he didn't?

Q. (By Mr. Blackman): Was there any reason why you couldn't send over to the——

The Court: Why he didn't.

Q. (By Mr. Blackman): ——why you didn't send over to the Civil Aeronautics Administration a copy of War Assets Form 65, which is Plaintiff's Exhibit 1 in this case, so they could record it in the file pertaining to this airplane?

The Witness: Would you state that again, please?

The Court: Is there any reason why you didn't send over to the Civil Aeronautics Administration Plaintiff's Exhibit 1, Form 65, or any other document which would show these Government limitations upon the use or resale of this airplane, so that anyone examining the records in the Civil Aeronautics Administration would see these things and know about them?

Is that your question?

Mr. Blackman: That is the question exactly, your Honor.

(Testimony of Edward G. Bradley.)

The Witness: I do not recall we had any authority. If a person wanted to register a plane, that we had any—it was not a matter for our jurisdiction. I would have no reason to have sent a Form 65 to the Civil Aeronautics Administration. [722]

The Court: Except to advise them of the status of a plane. They keep a file on various planes, do they not?

The Witness: I presume so.

The Court: Wouldn't it be convenient for them to have all this information?

The Witness: I presume it would. But we never came to that agreement.

The Court: There was no reason that you know of why it wasn't done?

The Witness: No, sir.

The Court: Does that cover it, Mr. Blackman?

Mr. Blackman: Almost, your Honor.

Q. (By Mr. Blackman): As a matter of fact, Mr. Bradley, that was done in connection with the other C-46 which is not in suit, was it not?

Mr. Blackman: Mr. Clerk, will you lay before the witness Exhibit U?

Can you answer the question?

The Witness: Would you please repeat it?

Mr. Blackman: Mr. Reporter, will you please read it?

(The question was read.)

The Witness: I have no knowledge that it was done in connection with this, that the Federal Secu-

(Testimony of Edward G. Bradley.)

rity Agency sent these documents over to the Civil Aeronautics Administration. Is that your question? [723]

Mr. Blackman: Are you looking at Exhibit U at this time?

The Court: Exhibit U is a certified copy of the Civil Aeronautics Administration file, is it?

Mr. Blackman: Yes, sir.

The Court: And your question is, does he know how those papers got into that file.

Mr. Blackman: That is as good a way of putting it, your Honor, as any.

The Witness: I do not know.

The Court: Do you see a copy of the War Assets Form 65 in there?

The Witness: Yes, sir.

Mr. Blackman: I have no further questions.

The Court: Anything further, Mr. Abbott?

Mr. Abbott: May it be stipulated, your Honor, that Exhibit U relates to the hulk, the aircraft portrayed in the pictures displayed by Mr. Finn?

Mr. Blackman: By all means.

The Court: Is it in evidence?

Mr. Blackman: If it isn't, we will offer it in evidence at this time.

The Court: That is up to you gentlemen to check and keep a list of what is in evidence.

Mr. Abbott: It is not in evidence. [724]

The Court: Is there objection to the offer?

Mr. Abbott: No objection.

Mr. Blackman: We are offering it.

(Testimony of Edward G. Bradley.)

Mr. Nelson: No objection.

The Court: Received in evidence as Exhibit U. Whose Exhibit U is it? International's?

Mr. Blackman: I don't believe it is International's.

Mr. Abbott: It is International's.

The Court: It may be received in evidence.

(The document referred to, marked International's Exhibit U, was received in evidence.)

The Court: Now, Mr. George Finn, do you have anything more you have to ask Mr. Bradley about this affidavit, or anything else?

Mr. Georg C. Finn: Yes, your Honor.

The Court: Proceed.

Mr. George C. Finn: The question, your Honor, that I raised in this affidavit——

The Court: Just put your question.

Is there a copy of the document before the witness?

Mr. George C. Finn: Yes, your Honor. Oh, no, your Honor.

The Court: The Government says that one is a duplicate original.

Mr. Clerk, will you place the duplicate original before [725] the witness.

Mr. George C. Finn: Here, I will give him this one.

The Court: Has it been marked?

Mr. George C. Finn: Your Honor, you can mark it as our exhibit.

(Testimony of Edward G. Bradley.)

The Court: Mark it as Government's next exhibit in order for identification.

The Clerk: Government's No.16 for identification.

(The document referred to was marked Plaintiff's Exhibit 16 for identification.)

The Court: Your question? [726]

Q. (By Mr. George C. Finn): Mr. Bradley, referring to the statement that Mr. Finn offered to—on page 2, about the middle of the page it states, "He," and that is referring to Mr. Finn, "He indicated he would be willing to pay the Federal Government two or three thousand dollars to secure the execution of such a document," and it refers to a sales document. A. Yes, sir.

The Court: Now, what is your question?

Q. (By Mr. George C. Finn): Mr. Bradley, was that statement made as to you, or as to the Federal Government?

A. The statement was made, Mr. Finn, as to the Federal Government.

Q. Was it made to you for the Federal Government? A. Yes, sir.

Q. Who was present, Mr. Bradley?

A. Just you and I.

Q. Mr. Bradley, are you aware that the Government offered to settle this case for \$2,500, and return the airplane to the Finns?

Mr. Abbott: Objection, your Honor, and we cite it as misconduct.

(Testimony of Edward G. Bradley.)

The Court: Yes, it is contemptuous misconduct. You should be punished for it. The jury is instructed to disregard it. Any matter concerning compromise is not properly admissible. If you knew anything at all about practicing [727] law, you would know that.

Mr. George C. Finn: I am sorry, your Honor. I apologize. I didn't know about it.

The Court: That is the trouble with a layman practicing law.

Mr. Abbott: May the Government be heard with a motion as soon as we recess, your Honor?

The Court: Yes.

Mr. Charles C. Finn: Your Honor, I believe that he made the point——

The Court: You sit down. Any further questions of this witness?

Q. (By Mr. George C. Finn): On page 3, Mr. Bradley, you make the statement in this affidavit that reads, "In other words he"—and it refers to Mr. Finn—"was advised that the only title to the plane which he could receive from the school which would be recognized by the Federal Security Agency was a purchase under proper conditions of the plane as scrap."

The Court: What is your question? Did he say that or not, is that the question?

Mr. George C. Finn: No, your Honor.

The Court: What is your next question?

Q. (By Mr. George C. Finn): Mr. Bradley,

(Testimony of Edward G. Bradley.)

did you interpret that to mean the passage of title to the plane as scrap [728] was acceptable to the Federal Security Agency?

A. Would you please repeat that?

Q. Did you mean by that statement that the passage of title to the plane as scrap was acceptable to the Federal Security Agency?

The Court: Objection sustained. Put your next question.

Mr. George C. Finn: That was the last question, your Honor.

The Court: Very well, Any further questions of this witness?

Mr. Abbott: None by the Government, your Honor.

Mr. Nelson: No cross-examination.

The Court: You may step down. You are excused.

(Witness excused.)

The Court: We will take the usual afternoon recess, ladies and gentlemen, for five minutes, subject to the usual admonition.

(Thereupon the jury retired from the courtroom.)

The Court: Let the record show the jury has retired from the courtroom. The clerk has forms of special verdict to hand to counsel and the parties, and I will ask you, gentlemen, to examine them.

Mr. Abbott: May the Government be heard with a motion at this time, your Honor?

The Court: You may. [729]

Mr. Abbott: The remarks of Mr. Finn at the close of the session just concluded, standing alone would more than justify an order of mistrial, your Honor. We so move, but in addition to those remarks so made, we will ask the court to briefly review the record of conduct by these defendants in this case time after time despite the court's admonition. They have stood up, and in the presence of the jury, have stated that the Government has deprived them of a jury trial in this case, which not only has the effect and does prejudice the Government's case, but was well calculated to do so, and though some rules of judicial conduct and of professional conduct are probably known only to lawyers, or best to lawyers, there can be no doubt as to both Messrs. Finn in making those statements on repeated occasions during the course of this trial. This last statement by Mr. George Finn that there has been an offer to compromise the suit by some figure of some \$2,500 is not only misleading, but even if it were completely true, it would be highly prejudicial to the Government's case.

We, therefore, move the court in this case to dismiss the jury and hear the case without a jury.

Mr. Blackman: We have nothing to say, your Honor.

Mr. Nelson: Nothing to say at this time, your Honor.

Mr. George C. Finn: Your Honor, any reference that was made in our case in the record was not

made with any intent [730] or with any knowledge of dropping any proceedings.

The Court: In other words, you want to tell the court that you, a man of your maturity, thought it was perfectly proper to bring before the jury an offer of compromise?

Mr. George C. Finn: I didn't know, your Honor.

The Court: Did you ever hear of such a thing?

Mr. George C. Finn: No, sir.

The Court: In other words, in every accident case you would think that the plaintiff could come in and say, "Well, this morning the defendant offered me \$4,000?" Did you have that idea?

Mr. George C. Finn: No, your Honor.

The Court: Very well. Then why did you bring it before the jury?

Mr. George C. Finn: I can explain it, your Honor. As I understood the situation that occurred in court, that Mr. Abbott made the reference to me on the witness stand that I had offered Mr. Bradley, \$2,000 for a sales document.

I believe the record will show that I did not make any offer to the Government, but the question was put in such a fashion that I had offered to Mr. Bradley \$2,000 for a sales document, and then when I read Mr. Bradley's affidavit——

The Court: I heard the evidence. I didn't get the inference that the Government was attempting to insinuate in the slightest that there was an attempt made to bribe Mr. [731] Bradley. I understood it to be an offer to the Government.

Mr. George C. Finn: Your Honor, I was on the

witness stand, and it wasn't presented to me as an offer to the Government. It was presented——

The Court: In this trial, when you were on the witness stand?

Mr. George C. Finn: Yes.

The Court: And you say there the insinuation was made?

Mr. George C. Finn: Mr. Abbott asked me a question: "Did you ever offer" I believe it was "to Mr. Bradley of Federal Security Agency \$2,000 for a bill of sale to this airplane?"

And I would like to have the record read back, so that I can refresh my recollection.

The Court: Assume he did. What about it?

Mr. George C. Finn: Your Honor, the statement was made——

The Court: There was no insinuation, as I recall that it was a personal offer, or that it was an attempt to bribe, if that is what you are referring to.

Mr. George C. Finn: Your Honor, that is the insinuation I determined from this, and because of prior knowledge I had of Mr. Bradley, that the Government had an affidavit which stated that I had offered Mr. Bradley \$2,000.

The Court: What does that have to do with bringing before a jury an alleged offer of compromise in the lawsuit? [732]

Mr. George C. Finn: That has to do that I couldn't offer Mr. Bradley \$2,000 for a bill of sale for the plane.

The Court: Mr. Bradley said this morning that

you offered him or to the Government, that is, something, and he said again this afternoon that you made your offer, and there was no insinuation, that I heard, that it was anything but an offer to the Government.

Now, what does that have to do with bringing in an offer of compromise before the jury?

Mr. George C. Finn: Not this afternoon, your Honor, but prior to this, in the trial the insinuation was made that I had offered Mr. Bradley, \$2,000. The truth is that I did not offer Mr. Bradley or the Government that and the fact was that I refused to accept the Government's offer of \$2,500 to clean up this whole lawsuit.

The Court: And that is your idea of proof, is it?

Mr. George C. Finn: That is my idea.

The Court: In other words, it is your idea, and you are telling the court in good faith that if this was a personal injury action, an automobile accident case, that that kind of evidence could be brought before the jury, that you could say, "You know the insurance company offered me so much," and you could do that before the court?

Mr. George C. Finn: No, your Honor, that I wasn't bringing out in front of the jury. I was bringing out before [733] the jury the fact. I would not possibly—I would not under any circumstances——

The Court: That is a matter of argument.

Mr. George C. Finn: Yes, your Honor. I wouldn't know that. I was establishing the founda-

tion that it would be foolish to offer Mr. Bradley \$2,000 for a sales document on a scrapped airplane, where I wouldn't even accept or give them any money on an airplane that was in suit, which they asked \$198,000 for. That is my position, and that was the only position I take.

The Court: I didn't ask you your position. I asked you why you brought it out in the presence of the jury, when anyone would know that that is improper, it seems to me.

Mr. George C. Finn: That was why I brought it out, your Honor.

The Court: Because you knew it was improper?

Mr. George C. Finn: No, your Honor, it didn't seem to me to be improper. It seemed to me to be expressing the truth of the matter, and I related it for that. The relationship is what I was interested in, the facts as they are set forth in order, in chronological order, and I wanted to establish that such a position was erroneous.

The Court: I will deny the motion for a mistrial. I will entertain a motion that this party be held in contempt of court and be punished accordingly in due time. [734]

Mr. Abbott: The Government so moves, your Honor.

The Court: It will take more than that. I will entertain a formal motion.

Mr. Abbott: Shall the Government proceed by written moving papers, or will the court entertain an oral motion at this time?

The Court: I think you should proceed by written papers, so that the matter will be entered in due form, and be specific.

Mr. Charles C. Finn: May I ask a question, your Honor?

The Court: Yes.

Mr. Charles C. Finn: Do we understand, your Honor, we are now—my brother is now held in contempt of court?

The Court: No. I said I will entertain a motion by the Government to hold him in contempt of court for what he has just done.

Mr. Charles C. Finn: Do we have any defense against that motion?

The Court: You will be heard; that is, your brother will be. You are not involved in it.

Mr. Charles C. Finn: Will I——

The Court: Do you want to get involved in it? Is that what you want, too?

Mr. Charles C. Finn: I am involved in this respect——

The Court: Not in this incident, and I suggest you sit [735] down and stay out of it.

Now, we will take it up in due course, at the end of the trial.

Mr. Abbott: Anything further, if the court please?

Mr. Nelson: Now, if the court please, on these interrogatories——

The Court: I don't want to discuss these interrogatories until we discuss them all at once.

Mr. Nelson: Then I will hold it until that time.

The Court: You discuss them with counsel first, unless there is some obvious matter.

Mr. Nelson: No, your Honor, it isn't. It is a substantive matter.

The Court: Very well. We will recess for five minutes.

(Short recess.)

The Court: The record will show the jury are present. You may call the Government's next witness on rebuttal.

Mr. Abbott: Mr. Hiller, please.

MANUEL B. HILLER

called as a witness by and on behalf of the plaintiff, in rebuttal, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Manuel B. Hiller, H-i-l-l-e-r.

The Clerk: Be seated, Mr. Hiller, please. [736]

Direct Examination

By Mr. Abbott:

Q. What is your profession, sir?

A. I am a lawyer.

Q. And what is your present employment?

A. I am employed by the Department of Health, Education and Welfare.

Q. How long have you been employed by the Government in a legal capacity, sir?

A. Since 1942.

Q. Calling your attention to the month of April, 1951, did you attend a meeting with Mr. George

(Testimony of Manuel B. Hiller.)

Finn, Mr. E. O. Bradley, Mr. E. J. Davidson, all of the Federal Security Agency, except Mr. Finn, and a Mr. Howard of the Civil Aeronautics Administration and a Miss O'Neil of the Civil Aeronautics Administration? A. I did.

Q. Do you recall the date of that meeting?

A. Not the exact date. It was sometime in the month of April.

Q. Do you recall whether it was in the early or the latter part of April, Mr. Hiller?

A. I would say it was probably in the earlier half of the month.

Q. Do you recall the place of that meeting? [737]

A. Yes, sir.

Q. Where was it?

A. It was in the office of Mr. Bradley.

Q. Was that in the Federal Security Agency building in Washington, D. C.?

A. That is correct, sir.

Q. Will you please state to the court and jury, sir, what was said by each of the persons present, as nearly as possible to the order in which it was in fact said?

A. Well, sir, the meeting was opened by Mr. Bradley, as I recall, with a statement of the facts involved, the alleged purchase of an aircraft by Mr. Finn, from the Vineland School District, and Mr. Finn's interest in ascertaining the limitations or restrictions to which the plane was subject, and what, if any, relief could be afforded to Mr. Finn insofar as having the limitations or the restrictions removed.

(Testimony of Manuel B. Hiller.)

We had rather extended discussion concerning the limitations, as they were contained in the War Assets Form 65 agreement.

Mr. Blackman: If the court please, is this what the witness said in this meeting, or is he saying——

The Court: He is summarizing what happened in the meeting, as I understand his answer. Is that correct?

The Witness: That is correct, sir.

Mr. Blackman: Very well. [738]

The Witness: Our discussion centered mainly upon the language contained in the Form 65 agreement, and the language contained in War Assets Regulation No. 4, the difference that existed between the language, and the legal effect and consequences flowing from that difference or distinction.

After some time, or, rather, Mr. Finn urged that the language in the Form 65 agreement should be read consistent with the language in the regulation.

I pointed out to Mr. Finn that the language went beyond the limitations or the requirements of the regulation, and that they established the terms of the transfer by which the plane was made available to the school for educational purposes.

The Court: As a matter of fact, the language of the Form 65 was the language of the regulation, as it had previously existed before being amended, wasn't it, in substance?

The Witness: I believe so.

(Testimony of Manuel B. Hiller.)

The Court: In other words, at the time you talked there had been a time when Regulation 4, laid down the same requirements as are in that document, Form 65?

The Witness: Well, there was a slight difference, if you please, your Honor.

The Court: In substance?

The Witness: The Form 35, which was an RFC form that preceded the Form 65, was one which was entirely consistent with the prior regulation, the Surplus Property Board Regulation 4. [739] The War Assets Form 65 was not identical in language with the language contained in the War Assets Regulation 4.

The Court: Both of them contained restrictions greater than those at the time of your meeting provided in Regulation 4?

The Witness: Only the Form 65, your Honor.

The Court. Only the Form 65?

The Witness: That's right.

Q. (By Mr. Abbott): Go ahead with your relation of what occurred, please.

A. Well, as I said, Mr. Finn was arguing the interpretation to be placed upon the language in the Form 65 agreement. During the course of the conversation Mr. Howard expressed an opinion respecting the Form 65 agreement. He said that so far as he was concerned he thought that there might have been transferred, by virtue of the Form 65 agreement, an interest or such title as he would feel himself compelled under the Civil Aeronautics

(Testimony of Manuel B. Hiller.)

Act to respect by registration under that Act, and under the regulations issued by the Civil Aeronautics Administration.

However, he did indicate, or say, in fact, that registration under that Act is not evidence of ownership; that if there were any dispute respecting the ownership of any aircraft involved by reason of a Form 65 agreement, that that dispute was one to be settled between the claimed owner and [740] the United States by appropriate proceedings in a court having jurisdiction.

As a result of this provision, Mr. Finn asked, in effect, "Well, what did I get for my money?"

To which point I said, "That, at most, Mr. Finn, I believe that you got the right, if any, to scrap the plane, reduce it to scrap, and sell it for whatever scrap value it may have."

He then addressed himself to the question of what relief, if any, we could afford him from the limitations of the Form 65 agreement.

I indicated to him that we were powerless to grant any relief, because the Administrator of the Agency had issued a policy statement regarding all educational aircraft. The substance of the policy was to the effect that no aircraft will be released from the educational restrictions for sale for flight purposes, that they could only be redispensed of for scrap purposes, in accordance with the terms of the original instruments.

Mr. Finn wanted to know whether or not that regulation was one which was binding upon us. I

(Testimony of Manuel B. Hiller.)

said that it was. I indicated that no departure from the regulation had been made, to my knowledge, and that if he was unhappy with it, why, he was at perfect liberty to attempt to see the Federal Security Agency Administrator, and request of him either that the [741] policy be reviewed, or that an exception to the policy be made in his case, and it was more or less upon that note that we terminated the conference.

Q. Have you had any other conferences with Mr. Finn at any time? A. No, sir.

Q. Would your duties require you to have knowledge as to whether or not any person authorized by statute took steps to release or modify restrictions, or to release or modify the Government's interest in any aircraft—— A. Yes, sir.

Q. ——in the possession of Vineland?

A. Yes, sir.

Q. Can you state whether or not that has occurred? A. That has not.

Q. Do your duties require you to know whether or not any person authorized by law has sent a notice to the Administrator or the General Services Administration of a proposed release or modification of restrictions upon sale, use or possession of any aircraft in the possession of the Vineland Elementary School District?

A. I would be informed or made aware of any such notice.

Q. Was there in fact such a notice with respect

(Testimony of Manuel B. Hiller.)

to any of the aircraft in the possession of the Vineland Elementary School District? [742]

A. No, sir.

Q. Now, are you confining your answer to any particular time, or does your answer cover the entire period when Vineland was in the possession of the aircraft?

A. Well, sir, I have many times reviewed the files involving the Vineland School District, and if any notice were ever given to that effect, a copy of that notice would have been in the files, and as of last week, which was the last time I had occasion to review the files, I found no such notice.

Q. Have you had occasion to search the files of the Federal Security Agency to ascertain whether or not those files contained any letter fixing a policy for registration or non-registration of aircraft in the hands of schools? A. Yes, sir.

Q. Did you find any such letter?

A. I believe I found one such letter.

Mr. Abbott: May Plaintiff's Exhibit 11 be placed before the witness.

The Clerk: It does not seem to be here, Mr. Abbott, with the rest of them.

The Court: Was it before Mr. Bradley near the end of his examination?

The Clerk: Yes, here it is, your Honor. That is it (indicating to witness). [743]

The Court: What is your question?

Q. (By Mr. Abbott): Is that the letter that you found, referring now to Plaintiff's Exhibit 11?

(Testimony of Manuel B. Hiller.)

A. Yes, I believe it is. [744]

Q. Are you able to state whether or not there is any other letter in the files of the Federal Security Agency relative to arrangements for registration or non-registration by the Civil Aeronautics Administration of aircraft in the possession of schools pursuant to the Surplus Property Act of 1944?

A. I found no letter other than the one before me.

Q. Did you cause a search to be made of the records of the Civil Aeronautics Administration to determine those files contained any such letters?

A. I did, sir.

Q. And what was the result of that search?

A. No letter other than this one was found in the Civil Aeronautics Administration files.

Q. Do you know what persons—when you say “this one,” sir, are you referring to Plaintiff’s Exhibit 11?

A. That is correct, sir.

Q. What persons within the Federal Security Agency have been given authority to release or modify restrictions or interests which the Government possessed with respect to aircraft in the possession of schools pursuant to the Surplus Property Act of 1944?

A. Only those persons to whom delegations were formally issued, and they were the Director of the Office of Field Services and the Chief of Surplus Property Utilization [745] Division.

Q. Are you aware of any action by either of those offices by which they modified, released or

(Testimony of Manuel B. Hiller.)

affected in any fashion restrictions existing, and the interest of the Government, existing in and to property in the possession of the Vineland Elementary School District, and received by it pursuant to the Surplus Property Act of 1944?

A. No, sir.

Mr. Blackman: Just a moment. That is objected to as no proper foundation laid, and calling for a conclusion of this witness in its present form.

The Court: Sustained. I suggest you rephrase it. The answer will be stricken.

Q. (By Mr. Abbott): Do the duties of your office require that you be aware of action taken by any of the persons authorized to exercise the functions of the Federal Security Administrator pursuant to 40 U.S.C Section 484(K)(2)(a)?

A. Yes, sir.

Q. Are you aware of any action taken by any of the persons authorized to perform that function with respect to the property in the hands of the Vineland Elementary School pursuant to Surplus Property Act of 1944?

Mr. Blackman: That same objection, your Honor; and further, on the grounds that an affirmative action as distinguished from a negative action would be required. [746]

Mr. Abbott: There can be no doubt that affirmative action is required under the statutes, your Honor.

The Court: Please read the question, Mr. Reporter.

(Testimony of Manuel B. Hiller.)

(The question was read.)

The Court: Persons authorized to perform what functions?

Mr. Abbott: The functions defined in 40 U.S.C. 484(K)(2)(a), your Honor.

The Court: Relating to restrictions upon use or resale?

Mr. Abbott: Or in any way affecting the Government's interest——

The Court: The question is, does he know who would be authorized?

Mr. Abbott: Does he know whether any of the persons authorized, whom he has previously described, have taken any action to release or modify those restrictions, or that interest?

The Court: Do you understand the question?

The Witness: Yes.

The Court: Overruled. You may answer.

The Witness: I know that no such action was taken by those so authorized.

Q. (By Mr. Abbott): Calling your attention to the meeting with Mr. Finn and the others, which you previously described, was there, in the course of that meeting, any statement by any representative of the Federal Security Agency [747] to the effect, or in substance, that those representatives were not able to determine why the provisions of War Assets Administration Form 65 did not coincide with Regulation 4, as Mr. Finn has testified?

(Testimony of Manuel B. Hiller.)

A. No, I don't believe I recall such a conversation.

Q. Was there any statement by any representative of the Federal Security Agency in the course of that conference, in substance or effect; that if the Civil Aeronautics Administration wished to accept the Finns' proof of title and give to the Finns their registration, that such action would be acceptable to the Federal Security Agency?

A. No, sir. The conversation was to the effect that registration, if any, would have no effect upon ownership and would have no bearing upon our own dispute or acceptability or unacceptability.

Q. Was Mr. Howard viewing a Form 65 specimen at the time of that conversation, or in the course of it? A. I believe so.

Q. Was there any particular file being examined or displayed in the course of that conversation?

A. My recollection is that we had one or more copies of the War Assets Regulation 4, and several blank incomplete copies of the War Assets Form 65 agreement.

Q. In the course of that conference was there any examination of any particular file relating to any particular [748] transactions?

A. No, sir. The conversation was a general one. It related in great part to the interpretation and the legal effect of the form as a form, and the provisions in Regulation 4.

Q. Was there, in the course of that conference, any discussion of a policy letter written by the

(Testimony of Manuel B. Hiller.)

Federal Security Agency to the Civil Aeronautics Administration relative to restriction of school aircraft, as Mr. Finn has stated?

A. I don't recall any.

Q. Had you at the time of that conference ever heard of any such policy letter? Do you understand my question, sir?

A. Would you repeat it, please?

Q. Had you, at the time of the conference in April, 1951, which you have described, heard or received any knowledge of any policy letter written by the Federal Security Agency to the Civil Aeronautics Administration and relating to the restriction of school aircraft?

A. No, I don't recall.

Q. In the course of the meeting which you have described in your testimony was there any reference to a document entitled "sales receipt"?

Mr. Abbott: And in that regard I will ask that the clerk place before you International's Exhibit A.

Q. (By Mr. Abbott): Viewing now International's Exhibit [749] A, and that page of it which is entitled "Sales Receipt," Mr. Hiller, was there any discussion in the course of the conference described of a document entitled "Sales Receipt," or any specimen of that document?

A. No, sir. I don't believe we had any such document at the time.

Q. Was there any discussion, in substance or effect, in this tenor, that the sales receipt document

(Testimony of Manuel B. Hiller.)

or a sales receipt document contained all of the elements of a bill of sale?

A. I don't recall it.

Q. Was there any discussion relative to what the elements of a bill of sale might be in the course of that discussion?

A. Well, we did have a bit of a discussion as to the effect of the Form 65 agreement, and whether or not that would constitute a bill of sale or would serve to pass title or any other interest in the property. But I don't recall that that conversation was related to this document.

Q. Was there any other conversation then, that is, conversation not related to the Form 65, in which you and the other persons present discussed the elements of a bill of sale? A. No.

Q. What was your response when Mr. Howard stated that the Form 65 appeared to him to create a registerable interest? [750]

A. Well, I told him that I was constrained to take issue with him. Mr. Davidson joined me in that view. We felt, and we so expressed ourselves, that the Form 65 agreement was a general agreement that had no relation to any specific property at the time, and so it could not serve to effectively pass title to any specific piece of property.

We pointed that out to Mr. Howard, and there was the difference of opinion between our two respective agencies. However that may have been, Mr. Howard, as I said before, indicated that while it might constitute, as far as he was concerned, a

(Testimony of Manuel B. Hiller.)

document upon which he might feel his agency might be constrained to grant registration, it would not be declaratory of the rights of ownership by respecting the claim. That those were rights—those rights, or the ownership of the plane was something that was a matter for the courts.

Mr. Abbott: No further questions, your Honor.

The Court: Any cross-examination?

Cross-Examination

By Mr. Blackman:

Q. Mr. Miller, how long have you been with the Department of Health, Education and Welfare?

A. I became associated with the Department of Health, Education and Welfare in January of 1950. I left it [751] approximately June of 1951, and returned about June of 1953.

Q. So that in telling us what you knew or didn't know about what any of these officials did, you would limit your statement to the period of time that you were connected with that department, is that right?

A. Well, insofar as my knowledge of certain facts, to which I have testified, is based upon my review of files. Those files extend beyond the entire period, even though I may have been away for some small time in between.

The Court: If action did not appear in the file, you would not know about it?

The Witness: That is correct.

(Testimony of Manuel B. Hiller.)

Q. (By Mr. Blackman): When you refer to files, are you referring to the file involving the disposal of aircraft property to the Vineland School District, which is maintained by the Federal Security Agency? A. That is correct, sir.

Q. You stated you have looked at that file many times, I believe, is that correct?

A. Well, sir, we have several files. We have a file in the office of the general counsel which contains legal views, documents of various kinds, and there is what we call an administrative file which is kept by the Surplus Property Utilization Division.

Now, up until the time that I left the Federal Security [752] Agency in 1951, I had, of course, seen both files. Since returning I have only had available to me the general counsel's file.

Q. That is the file which is most concerned with compliance? A. Not necessarily.

Q. Well, will you tell me the distinction between the two files, please?

A. Well, the surplus property file consists, normally, of the basic original documents in connection with any transfer or disposal; all the subsequent correspondence that follows in connection with the disposal or in connection with any compliance matter related thereto.

The general counsel's office maintains its own files respecting those cases which they have reason to open, whether it be a matter of compliance or not.

(Testimony of Manuel B. Hiller.)

Now, we did have in this case a general counsel's file covering the Vineland aircraft.

Q. And before you left the agency in 1951 you had access to both files?

A. That is correct, sir.

Q. Since you returned to the agency you have only seen the general counsel's file, is that correct?

A. That is correct.

Q. Now, then, up until June of 1951, you had been [753] working with those files, is that correct?

A. That is right.

Q. And had looked at those files several times?

A. Yes, sir.

Q. How many aircraft did Vineland School District obtain from the Government, if you know?

A. Well, I have since learned—though I did not know at the time of the meeting with Mr. Finn—but I have since learned there were three involved. There were two C-46s and one AT-6.

Q. And the AT-6 is what is referred to as a tactical type aircraft?

A. I am not familiar with the designations beyond knowing that the C-46 and the C-47 were more or less transports.

The Court: And the AT-6 would be a trainer, would it not?

The Witness: I believe that was.

Mr. Blackman: I believe that is correct.

The Court: May it be so stipulated?

Mr. Abbott: So stipulated.

Mr. Nelson: So stipulated.

(Testimony of Manuel B. Hiller.)

Mr. Blackman: So stipulated.

Q. (By Mr. Blackman): Well, Mr. Hiller, is it your testimony that in your perusal of these files before June, [754] 1951, you were not aware that Vineland had obtained these three aircraft from the Government?

A. Perhaps I didn't make myself clear. Prior to June of 1951 there were both of these files available. I do not recall that I had occasion to go back and review either of those files in connection with the Vineland school. There was no issue presented, to my knowledge.

When the meeting concluded, I had thought that the entire matter was concluded. It was not until I returned to the agency in 1953 that I went through such files as were available.

Q. Well, how many times did you have these files brought to your attention up until June of 1951?

A. I don't believe I saw that file. The administrative file—I don't believe we had a file in the general counsel's office at any time prior to June of 1951. I don't believe I had occasion to look at the so-called administrative file but perhaps once.

Q. Which was on what occasion?

A. It may have been—I guess it must have been after I returned to the agency.

Q. You mean in 1953?

A. That is correct, sir.

Q. Are you now telling us that you never looked in either file prior to June of 1951? [755]

(Testimony of Manuel B. Hiller.)

A. Well, there was only one file that I know of prior to June, 1951. There was no file in the general counsel's office.

Q. Very well. Let's limit the question then to that one file. Are you now telling us you never looked at that file prior to June of 1951?

A. I don't recall.

Q. You have no knowledge one way or the other?

A. No, sir.

Q. Do you know today that the information concerning the disposal of all of the three aircraft to Vineland was contained in that file?

A. Yes, sir; I have since so ascertained.

Q. It has been in that file at all times, let us say, from and after the date of disposal, as far as you know?

A. I don't know. I can't say how long it has been there.

Q. Well, let's say at least been in the files as far as you know at all times since the date of this meeting on April 4, 1951?

A. It may have been. I couldn't say any more.

Q. Would it be in the normal course of business to have been in that file?

A. Yes.

Q. You have no reason to suspect otherwise then, have [756] you?

A. No.

Q. Now, getting to this meeting of April 4th, did you make any notes of that conference after you had concluded it?

A. No, sir.

Q. To you it was just simply a routine matter that you thought was concluded after the conference

(Testimony of Manuel B. Hiller.)

closed? A. I had so assumed.

Q. You had no reason to recollect it or remember it at any time until after you got back to the agency in 1953, is that right?

A. That is not so. I did have reason to recollect it. The meeting involved a rather unique situation, unique in the sense that it was composed of a private citizen who had come into a Government office, who was a layman and not a lawyer, as he indicated, and who argued questions of interpretation of regulations and legal documents with three lawyers who were present, Mr. Howard, Mr. Davidson and myself. And it is not a normal, not an everyday situation, and it just made an impression upon me.

Q. Well, when, if at all, did you first review this meeting with anybody?

A. Do you mean in my own mind?

Q. Yes. [757]

A. I guess it was about in the summer or early fall of 1951.

Q. And with whom?

A. A Mr. Hannings of the Federal Security Agency, who was a lawyer in the general counsel's office. He called me and he told me that the Finns had flown the plane away and that there might be some litigation and what, if anything, did I recall of my meeting with Mr. Finn and Mr. Bradley and the others. And at that time I reviewed my recollection of what transpired.

Q. Now, when he told you that, did you ask him

(Testimony of Manuel B. Hiller.)

whether or not he had called the Civil Aeronautics Administration and taken any steps with the C.A.A. to prevent any further transfer, or anything to that effect?

A. As I recall, he told me steps were being taken to refer the matter to the Department of Justice. I was not with the——

Q. My question was whether or not you asked him if he had called the C.A.A. or advised anybody over there not to further transfer the airplane until the matter had been ironed out, or anything to that effect? A. No, sir.

Q. Did you ever regard that as a possibility?

Mr. Abbott: Objection, your Honor. That question is speculative. [758]

The Court: Sustained.

Q. (By Mr. Blackman): You yourself took no action to put the Civil Aeronautics Administration file on notice of any rights that the Government may have retained in the airplane, did you?

A. No, sir.

Q. Would it be in the course of your official duty to know if anybody else in the department had done so? A. It might or might not.

Q. I will ask you whether you do know whether anybody else in the department took the matter up with the Civil Aeronautics Administration and asked them not to permit any further transfer of the airplane or anybody else's right from attaching the airplane?

A. To the best of my knowledge, I don't know.

(Testimony of Manuel B. Hiller.)

Q. And, as a matter of fact, this lawsuit was the first public notice with respect to the Government asserting a claim in this airplane, was it not?

Mr. Abbott: Objection. The witness isn't competent to answer that.

The Court: First public notice of which he knows?

Mr. Blackman: Of which he knows.

Mr. Abbott: The documents of the Civil Aeronautics Administration are before the court, marked for identification, although not in evidence. [759]

The Court: This is an inquiry as to this witness' knowledge, as I understand it.

Do you understand the question?

The Witness: I believe so.

The Court: You may answer. Do you know of any public notice of the Government's claim in this airplane prior to the commencement of this suit? Is that the question?

The Witness: Well, I recall some correspondence in the file. Whether that would be considered public notice, I don't know.

The Court: You mean the file of the Federal Security Agency?

The Witness: That is right.

Q. (By Mr. Blackman): Was there anything, to your knowledge, in the file of the Civil Aeronautics Administration which would give notice of the Government's claim to an interest in this claim in suit? A. Not to my knowledge.

(Testimony of Manuel B. Hiller.)

Q. And did anybody ever call to the attention of the agency for whom you rendered your services that International Airports had recorded a chattel mortgage on this aircraft on November 14, 1951?

A. I don't know whether the agency was so informed that a chattel mortgage had been given or recorded.

Q. You have reviewed this file of the Vineland School [760] District, have you not?

The Court: Which file?

The Witness: Yes.

The Court: Federal Security Agency file?

Mr. Blackman: Federal Security Agency file.

Q. (By Mr. Blackman): Have you ever seen anything in there to the effect that International had recorded a chattel mortgage on this airplane in November of 1951?

A. Well, upon my review of the file in 1953, upon my return to the agency, I did see something in the file to that effect.

Q. Did you find any correspondence in there where anybody in the Federal Security Agency attempted to communicate with International and put International on notice of the Government's right in this matter, if any?

A. No, sir.

Q. If there was any correspondence between the Federal Security Agency and the Civil Aeronautics Administration, do you know whether any of that correspondence was more than just inter-office correspondence?

A. I am sorry. I don't understand the question.

(Testimony of Manuel B. Hiller.)

Q. Well, let me ask you this: You are an attorney. You know what a *lis pendens* is, or anything similar? A. Yes.

Q. Was there any formal document filed in the Civil [761] Aeronautics Administration file which would be of the type that is considered properly registerable by the Civil Aeronautics Act of 1938, in the file of the aircraft in suit?

A. Not to my knowledge.

Q. All you know about is the possibility of some inter-office correspondence, is that correct?

A. That is correct.

Q. Do you know a Mr. Baxter? A. I do.

Q. What is his capacity?

A. At the present time?

Q. No; let's go back to 1951, in April.

A. I believe Mr. Baxter was then Chief of the Surplus Property Utilization Division. I hesitate only because the name was changed, and I am not—I can't recall now just as of what date the title was changed. I believe it was Chief.

Q. The Chief of the Surplus Property Utilization Division was one of those officers formally designated by the Administrator to release any alleged restrictions in these transfers, is that not true?

A. It was the office established to discharge the responsibility of the functions as established in the Federal Property and Administrative Services Act.

Q. Did you ever discuss this matter with Mr. Baxter?

(Testimony of Manuel B. Hiller.)

A. By "this matter," you mean the suit? [762]

Q. I am speaking now of the Finn transaction.

The Court: The airplane in suit?

Mr. Blackman: Yes, sir.

The Witness: No, sir; I don't believe I did.

The Court: Did you ever discuss the defendants Finn with Mr. Baxter?

The Witness: Yes, sir.

The Court: When was that?

The Witness: Upon my return to the agency in 1953.

Q. (By Mr. Blackman): Did Mr. Bradley tell you he had informed Mr. Baxter of the meeting of April 4, 1951? A. I don't recall. [763]

Q. In other words, you don't know what Mr. Bradley may have told Mr. Baxter, or what Mr. Baxter's reaction may have been; is that right?

A. That is correct.

Q. Whether he took any action or whether he failed to take any action, this is not a matter within your own personal knowledge; is that correct?

A. That is correct.

The Court: Did you ever discuss the airplane in suit with Mr. W. T. Frazier?

The Witness: Yes, sir.

The Court: When was that?

The Witness: It was since my return to the agency.

The Court: And not before?

The Witness: No, sir. I left, I believe it was,

(Testimony of Manuel B. Hiller.)

around the end of May or the beginning of June of 1951.

Q. (By Mr. Blackman): And when Mr. Finn asked you in this conference of April 4, 1951, "What did I get for my money," your statement to him was that he obtained the right to scrap the airplane?

A. I said, I believe, that at the very best he obtained the right to scrap the airplane and sell it for its basic material content.

Q. And that was your opinion at the time, was it, sir?

A. Yes, sir. [764]

Q. Is that still your opinion?

A. Yes, sir.

Mr. Blackman: No further questions.

The Court: Now, let's not repeat anything that was covered in the other cross-examination.

Mr. Nelson: I will try not to, your Honor.

Cross-Examination

By Mr. Nelson:

Q. Mr. Hiller, is it my understanding that when you left the meeting with the Finns on April 4th, that you did not thereafter check into this matter until you returned to the agency in 1953?

A. That is partially correct, sir. I did not check into the matter. I took no affirmative action to check into the matter because I thought, as I said before, that the matter was concluded at the end of the conference. When I returned to the agency, there was already pending, I believe, the present lawsuit.

(Testimony of Manuel B. Hiller.)

The Court: You returned to the agency in 1953?

The Witness: That is correct.

Q. (By Mr. Nelson): And when you did return to the agency and checked into this matter, you did so by referring to two files, as I understand, the General Counsel's file and the Federal Security Agency file; is that correct? [765]

A. That is correct.

Q. There are three agencies, are there not, which have the right—I will reframe that.

Is it your understanding that there are three agencies which have the right to give releases of these restrictions on educational property? Is that correct?

A. No, sir; that is not my understanding.

Q. You heard the testimony earlier this morning that the Administrator of the Federal Security Agency——

The Witness: Oh, three agencies. I thought by "agencies" you meant agencies rather than persons or individuals.

Mr. Nelson: That would be my error.

The Court: Who are the three?

Q. (By Mr. Nelson): I will name them, and see if this is correct: The Administrator of the Federal Security Agency, the Director of the Office of Field Services, and the Director of the Surplus Property Utilization Division?

A. The Chief of the Surplus Property Utilization Division. That is correct; those are the three.

Q. And any one of them had the right to make

(Testimony of Manuel B. Hiller.)

the releases that we are referring to in this action; is that right?

A. Subject, of course, to the right of the General Services Administrator to receive a 30-day notice, in [766] accordance with the requirements of the Act, and to express his disapproval of any proposed action in the way of a release.

Q. And if he did not make such an expression, would it just automatically be approved?

A. After the lapse of 30 days, that is correct.

Q. Now, did you check the files of all three agencies that we have referred to, the Administrative Agency, the Office of Field Services, and the Surplus Property Utilization Division, in making your determination as to whether or not any releases have been given?

A. To my knowledge, there are no such three sets of files. There is one set of files which is kept by the Surplus Property Utilization Division and the General Counsel's files.

Q. Did you check with the Office of Field Services or the Surplus Property Utilization Division as to whether or not they had made such a release at this time? A. Yes, sir.

Q. And what was their answer?

A. There had been no such release given.

Q. And with whom did you check in such instance?

A. With Mr. Frazier, Chief of the Division.

Q. And Mr. Frazier, of course, is the man that replaced Mr. Baxter, is he not?

(Testimony of Manuel B. Hiller.)

A. That is correct. [767]

Q. You did not check with Mr. Baxter himself, who was the Administrator at the time that these questions came up with the Finns?

A. No, sir; but I would believe that the file would reflect any release that had been given by Mr. Baxter or anyone else qualified or authorized to issue such a release.

Q. Are you referring now to the file of the Surplus Property Utilization Division?

A. No, sir; the General Counsel's office files would reveal it. Any release would be drawn, in the normal course of business, by the General Counsel's office for execution by any one of the three authorized persons named.

Q. If that happened, they sent a copy of that to you; is that correct? A. Pardon?

Q. It is possible, is it not, that these matters could have been taken care of by that particular division, and a copy not sent to your office?

A. Well, sir, it is possible, but instruments, releases and all kinds of legal documents were drawn by the General Counsel's office and not the Surplus Property Utilization Division. That is a part of our job responsibilities, to prepare legal instruments and documents, and if any such document were drawn, in the normal course of business it would have been drawn by the office of the General [768] Counsel pursuant to a request there made by the Surplus Property Division.

Under those circumstances, there would be a copy

(Testimony of Manuel B. Hiller.)

of the document and the original request memorandum made to the General Counsel's office in the files of the Office of the General Counsel.

Q. Do I understand that the General Counsel makes such a document in each individual instance that a release is requested, or is there a form of such a release?

A. No; we grant individual releases in individual cases.

Q. Can you say that in this instance one of these other agencies, the Administrator or Surplus Utilization or Field Services, could not have drawn up their own release and given it, without having sent a copy to your office?

A. I would say it is extremely unlikely.

Mr. Nelson: No further questions.

The Court: The Mr. Baxter whom you have mentioned was, at the time of this April, 1951, conference, one of the three officials authorized and empowered to give releases, was he?

The Witness: Yes, your Honor.

The Court: He is the man who Mr. Bradley testified as being his superior at that time?

The Witness: That is correct, sir.

The Court: Any further questions of Mr. [769] Hiller?

Do you have any cross-examination on behalf of the defendants Finn?

Mr. Charles C. Finn: Your Honor, there is a difference here, and is it possible to express an opinion without the jury staying?

(Testimony of Manuel B. Hiller.)

The Court: The question is, do you wish to ask any questions of this witness on cross-examination? That is a very simple question.

Mr. Charles C. Finn: I understand that, your Honor, but I would like to ask the court a question first, and I am afraid——

The Court: I don't want to hear anything. I just asked a question, if you wish to ask any questions. You are here representing yourself, and your brother is not representing you. One of you cannot represent the other. You each must represent yourselves.

Mr. Charles C. Finn: I appreciate that.

The Court: That is the only right you have. You may both appear through one attorney, but you both may not appear here, one representing the other.

Mr. Charles C. Finn: I appreciate that, your Honor, but in view of the circumstances this afternoon——

The Court: Do you wish to ask any questions of this witness?

Mr. Charles C. Finn: I hesitate to let my brother ask [770] any questions.

The Court: He isn't asking on your behalf. What he does does not bind you.

Mr. Charles C. Finn: I appreciate that, but it binds him, and it has this afternoon.

Mr. George C. Finn: Your Honor, I have no hesitancy.

The Court: Very well. You may ask questions.

(Testimony of Manuel B. Hiller.)

I want to take this occasion to tell the jury with respect to this matter of offers in compromise.

People may offer settlement of a lawsuit for a dozen different reasons. For example, the figure that was mentioned here this afternoon would not, I don't suppose, pay the expense of the Government in bringing these witnesses out here and keeping them here three or four or five days, much less the expense of this trial. So you are not to consider any statement of that sort, and what the Government may have been willing to pay in settlement of this case is absolutely immaterial. As I say, there may have been a dozen reasons. The law does not permit an offer of compromise to come before the court or the jury. The court is not even entitled to hear it in a case tried by the court, and the jury is not entitled to hear it, because if offers of compromise were received in evidence, I doubt if one would ever be made. You would be afraid to make an offer of settlement in a lawsuit to a lawyer for fear he would tell the jury. That is the reason [771] I reprimanded the defendant George Finn for bringing that matter up here, and you are to disregard it entirely, because, as I say, it has nothing whatever to do with the merits of this case.

The same way with all of these colloquies between court and counsel. The comments of the court and counsel are not evidence in the case, as I told you at the outset, unless they are made as a part of an agreement or stipulation by counsel on all sides that certain facts are true.

(Testimony of Manuel B. Hiller.)

You may proceed, Mr. Finn.

Cross-Examination

By Mr. George C. Finn:

Q. You stated that in the conference Mr. Howard stated that there was a registerable interest in this airplane. Did you determine and did he determine what that registerable interest was?

A. No, sir; we didn't.

Q. Did you determine, Mr. Hiller, that that was a partial interest or a total interest?

A. As you will recall, we made no attempt to ascertain what the nature or extent of the interest was which Mr. Howard thought was sufficient upon which to base a registration.

He had expressed himself as saying that under the Civil Aeronautics Act he thought that this would be adequate and [772] that he would be constrained to recommend that the aircraft be registered.

He had also at the same time indicated that whatever action CAA might take in connection with the registration of the aircraft, that that would have no effect upon the actual ownership or right in and to the property.

Q. Mr. Hiller, what is it that is registered?

A. Nationality is my understanding of what the registration provides.

The Court: By "nationality," you mean nationality or citizenship of the person who claims to own the plane?

(Testimony of Manuel B. Hiller.)

The Witness: That is correct, sir.

The Court: Whether he is an American, a Mexican, or a Peruvian, or whatever it is?

The Witness: That is correct, your Honor.

Q. (By Mr. George C. Finn): Mr. Hiller, in answer to that question, do you imply that a Mexican who owned an airplane and registered it in the United States, it would be a Mexican airplane?

A. I wouldn't undertake to say, sir.

Q. Mr. Hiller, in order to obtain a registration, what must be produced?

Mr. Abbott: Objection, your Honor. First, we have gone through this. Secondly, this witness is not competent to testify upon the registration procedure. He is an employee [773] of the Federal Security Agency.

The Court: Sustained.

Q. (By Mr. George C. Finn): At this meeting, Mr. Hiller, what was it that we discussed to register? What did we propose to register with the Civil Aeronautics Administration?

A. Well, it was your proposal, Mr. Finn, that the ownership of the title of the aircraft, as you asserted it to be, in yourself would be registered with CAA.

Q. Yes, sir.

A. It was the position of the Federal Security Agency people at the meeting that you had acquired nothing; that, at best, perhaps you had acquired a right to reduce the plane to scrap, if it had not already been done so, and then dispose of it as scrap.

(Testimony of Manuel B. Hiller.)

Q. But the thing we were actually registering with the CAA was the title, was it not, and the chain of title?

A. Well, I don't know, Mr. Finn, what you had planned to register with CAA, or what you had planned to submit to CAA.

Q. Well, Mr. Hiller, summarizing this that we are talking about, when I registered this aircraft, now, I would have to comply with the CAA regulations, would I not?

Mr. Abbott: Objection, your Honor. It is self-evidence he would have to comply with that Service's regulations.

The Court: Sustained. [774]

Q. (By Mr. George C. Finn): Are you aware that the CAA regulations require for an unregistered airplane that a chain of title must be submitted as proof of ownership before a registration can be granted? Are you aware of that?

A. Yes, sir.

Q. Isn't that what we were registering with the CAA, Mr. Hiller?

Mr. Abbott: Objection, your Honor. The witness has already testified he doesn't know what happened.

The Court: Sustained.

Q. (By Mr. George C. Finn): In our discussion to obtain the registration, weren't we to resolve the chain of title to be registered with the CAA, and wasn't it this chain of title that Mr. Howard said

(Testimony of Manuel B. Hiller.)

represented the interests that the Finns had to register the airplane for?

A. My recollection was that the discussion was concerned almost entirely with what right or interest the school acquired under the Form 65 agreement.

Now, that may have had a part or a place in connection with registration of an aircraft with CAA insofar as it represented a link in a chain of title, but we were not then immediately concerned with registration. We were then concerned with a delineation of the legal effect and the consequences of the registration and the Form 65 agreement.

Q. That wasn't my question, Mr. Hiller. The question [775] was: Was it not in our discussion to determine whether or not we had something to register with the Civil Aeronautics Administration?

The Court: You mean, is that what you talked about? Is that what you want to ask?

Mr. George C. Finn: That was our total discussion, to determine could we register this airplane.

The Court: If you will ever stop, probably he can answer your question. You have now asked two or three questions in one.

Mr. George C. Finn: Yes, your Honor.

The Court: Do you understand the question?

The Witness: I am not sure now, sir.

The Court: Did you talk about what he could register, if anything?

The Witness: Yes, sir.

The Court: Put your next question.

(Testimony of Manuel B. Hiller.)

Mr. George C. Finn: Pardon me. Did he say that is what we were going to register, the chain of title?

The Court: He said you talked about what you could register, if anything.

Q. (By Mr. George C. Finn): Was it not Mr. Howard's statement that this chain of title that we had discussed in this meeting could be registered with the Civil Aeronautics Administration? [776]

A. He had so expressed himself.

Q. Thank you. Now, you stated that registration was not proof of ownership except in a court. What does registration mean, Mr. Hiller?

Mr. Abbott: Objection, your Honor. That is a misstatement of the witness' testimony.

The Court: Sustained. It may be stricken, and I instruct the jury to disregard it.

Mr. Charles C. Finn: Your Honor, in view of your instructions, I wish to consult with my brother and see if I could terminate this questioning.

The Court: You may.

Mr. George C. Finn: It won't be necessary, your Honor.

The Court: Your brother is representing himself, and you are representing yourself. Just sit down, please.

Q. (By Mr. George C. Finn): Mr. Hiller, what does registration represent?

Mr. Abbott: Objection, your Honor. That is a matter of law.

The Court: Sustained.

Q. (By Mr. George C. Finn): Mr. Hiller, can

(Testimony of Manuel B. Hiller.)

an airplane be sold, to the best of your knowledge, without a registration certificate?

Mr. Abbott: The same objection, your Honor.

The Court: Sustained. [777]

Q. (By Mr. George C. Finn): To the best of your knowledge, Mr. Hiller, were any of the Government aircraft—well, are you acquainted with the Civil Aeronautics Act of 1938?

A. I have only——

The Court: Sustained. I will instruct counsel to object to these immaterial matters.

Mr. Abbott: I will do so, your Honor.

The Court: It does not matter whether he is familiar with the Act or not.

Q. (By Mr. George C. Finn): Does registration apply to civil aircraft, Mr. Hiller?

Mr. Abbott: Objection. That is a matter of law, your Honor.

The Court: Sustained. That is all a question of law. We are trying to get the facts now, not the law.

Q. (By Mr. George C. Finn): Mr. Hiller, you stated that you returned to the Federal Security Agency in 1953, and you left in June of 1951. When you returned in 1953, did you make any search of the Civil Aeronautics' files for this policy letter that we discussed? A. No, sir.

Q. When did you make that search, Mr. Hiller?

A. About two weeks ago.

Q. About two weeks ago? [778]

A. Yes, sir.

Q. You didn't make any search in 1951?

(Testimony of Manuel B. Hiller.)

A. No, sir.

Q. You didn't make any search in 1953?

A. No, sir.

Q. And you didn't find any letter at all when you made your search; is that correct?

A. I found the one letter of January, 1952, which is marked in evidence. I don't remember which exhibit it was.

The Court: Can you agree upon the exhibit?

Mr. Abbott: Plaintiff's 11, I believe, your Honor.

The Court: Plaintiff's Exhibit 14 or 15, or is it Exhibit 11?

Mr. Abbott: I believe the reference is to Plaintiff's 11, your Honor.

The Court: January 2, 1952?

The Witness: That's right, your Honor.

The Court: Your next question.

Q. (By Mr. George C. Finn): Now, when you were a member of the Federal Security Agency, that letter did not exist, did it?

A. Not to my knowledge.

Q. So that any policy letter that may have existed in 1951 would not have resulted from any search that you made; is that correct? [779]

Mr. Abbott: Objection, your Honor. There is no foundation here. It assumes matters not in the record.

The Court: Sustained.

Mr. George C. Finn: Your Honor, the impression I gathered——

The Court: He said he left the agency in 1950.

(Testimony of Manuel B. Hiller.)

Is that correct?

The Witness: 1951, your Honor.

The Court: In 1951, and the letter is dated in 1952.

Mr. George C. Finn: Yes, your Honor. We are searching for a letter dated in 1951, which no one has admitted its existence. Now, did anybody look for it?

The Court: Ask him.

Q. (By Mr. George C. Finn): Did you ever look for any letter of 1951 in the Civil Aeronautics' files?

A. I caused a search to be made of the CAA files.

Q. How did you cause that search to be made?

A. I communicated with the people of the Civil Aeronautics Administration.

Q. Who did you talk to?

A. A Mrs. Morrow.

Q. Did you talk to a Miss Margaret O'Neil?

A. No; Miss Margaret O'Neil was in Europe at the time.

Q. Do you recall in the conference, that Miss Margaret O'Neil was present at that [780] conference?

A. Yes.

Q. Do you recall any reference to a policy letter that Miss Margaret O'Neil had in her files?

A. No.

Q. You never asked Miss Margaret O'Neil whether she had such a letter subsequent to 1953,

(Testimony of Manuel B. Hiller.)

when you caused your search to be made; is that correct? A. That is correct.

Q. Were there any discussions, Mr. Hiller, as to a statute of limitations, regarding the expiration of restrictions on aircraft after being in possession of schools for three years? A. Yes, sir.

Q. What was that discussion, please?

A. As I recall, you were urging that the proper interpretation of the Form 65 agreement was that at the expiration of the three-year period the aircraft could then be disposed of by the school for any purpose whatever, and without consent of any government agency, and we took direct issue with you upon that interpretation.

Q. Do you remember on what that statement was based, the three-years' statute of limitation was based? Was it upon a regulation?

A. I believe it may have been.

Q. Was it Regulation 4, dated January 3, [781] 1946, appearing in the Federal Register on that date, do you recall?

A. I recall a War Assets Regulation 4, dated some time in May of 1946, but not in January.

Q. Did you ever see a regulation dated January 8, 1946? A. I may have.

Q. Do you recall whether or not the regulation dated in May rescinded the regulation dated January 8th?

Mr. Abbott: Objection, your Honor. That is a question of law.

(Testimony of Manuel B. Hiller.)

The Court: Sustained. As to any discussion, you are asking?

Mr. George C. Finn: Yes, your Honor.

The Court: You are asking if he recalls any discussion on that subject?

Mr. George C. Finn: Yes, your Honor.

The Court: Overruled. You may answer.

The Witness: I don't recall.

Q. (By Mr. George C. Finn): You do recall there was a discussion as to the statute of limitations based on the regulation?

A. Well, I recall that there was a three-year period mentioned both in the regulation and in the Form 65 agreement. It is not what I would characterize as a statute of limitations.

Q. Do you recall the original Regulation 4, which stated that aircraft must be disposed of only as scrap, and [782] then only after they shall have been reduced to their basic material content?

Mr. Abbott: Objection. The witness' recollection of the regulation is immaterial.

The Court: Sustained.

Mr. George C. Finn: I have the regulation, your Honor, if I may present it.

The Court: It is a matter of law. If the regulation is valid, it is the same and has equal dignity with the statute itself. It is a matter of law.

Mr. George C. Finn: Thank you, your [783] Honor.

Q. Do you recall that we raised the question that the original regulation, having been rescinded, was

(Testimony of Manuel B. Hiller.)

carried forward in the agreement and did not comply with the Regulation 4, as amended? Do you recall we had that discussion?

A. I am not sure that I understand what you mean by "the agreement carrying forth the regulation."

Q. Two regulations, the original one and the amended one. In the original regulation no three-year period was stated and forever all airplanes must be scrapped and reduced to their basic material content.

And then came an amended regulation which rescinded the original regulation and in addition stated aircraft acquired by schools would be disposed of but resold to others within three years of acquisition, and if scrapped, without approval of the disposal agency—words to that effect. Do you remember that?

A. I remember that the War Assets Regulation 4, in effect at the time that the Vineland School District acquired the aircraft in suit, was one which provided that property acquired under the regulation, or aircraft acquired under the regulation shall be sold only for scrap; that if the sale were within three years then the consent of the disposal agency must be obtained.

Q. That was in the agreement, wasn't it?

A. That was in the regulation. [784]

Mr. George C. Finn: May I read the regulation, your Honor?

(Testimony of Manuel B. Hiller.)

The Court: The regulation is a matter of law. Proceed.

Mr. George C. Finn: We seem to have a——

The Court: You aren't getting anywhere.

The Witness: I think I recall the more precise language of the regulation provided that acquired property shall be sold, when sold shall be required to have the consent of the disposal agency, unless sold for scrap after being mutilated.

Q. (By Mr. George C. Finn): And wasn't there a three-year—mention of three years in that regulation? A. I believe there was.

Mr. Abbott: Objection, your Honor. The question goes to a matter of law.

The Court: Sustained. You can sit there and discuss the regulation for five days with him and it won't change the regulation.

Mr. George C. Finn: The questions that we had in this conference, this discussion——

The Court: I don't want to hear from you. Put your next question. We have been over the conference enough. We aren't advancing it any with this.

Mr. Charles C. Finn: If it please the Court, I may discuss this for a moment——

The Court: Sit down. [785]

Q. (By Mr. George C. Finn): Mr. Hiller, in all of our discussions with the Federal Security Agency in your office, and with Mr. Bradley, everything was open and aboveboard, was it not?

A. Yes.

(Testimony of Manuel B. Hiller.)

Q. Nobody attempted to hide anything?

A. Not to my knowledge.

Q. And any files that were available, we could have asked for them and they be put on the table; everything open and aboveboard, is that correct?

A. I would think so.

Q. And you discussed this whole situation that we had in that office with Mr. Frazier?

A. Yes.

Q. Did you tell Mr. Frazier the same thing, that we had at this discussion, that everything was discussed open and aboveboard?

A. I believe so.

Mr. George C. Finn: May I refer to an exhibit, please?

The Court: When did you have this talk with Mr. Frazier?

The Witness: After my return to the Federal Security Agency.

The Court: 1953?

The Witness: Yes, sir.

The Court: What exhibit are you looking for? Perhaps [786] we can help you.

Mr. George C. Finn: I am looking for my C.A.A. file on the N-111H.

The Court: On the aircraft in suit?

Mr. George C. Finn: Yes, your Honor.

The Witness: I think this is it, sir.

The Court: The witness states he thinks he has it before him there. Perhaps you better look.

There was an Exhibit U, Civil Aeronautics Ad-

(Testimony of Manuel B. Hiller.)

ministration file, introduced today involving the so-called hulk.

Mr. George C. Finn: I have it, your Honor.

The Court: What is the designation? Exhibit what? What exhibit is it, Mr. Clerk?

The Clerk: It is K-1, -2, -3, -4, clear up to K-22.

The Court: Very well. Stand at the lectern and put your question. Or, if you wish the document placed before the witness, the clerk will place it before the witness.

Mr. George C. Finn: S for identification. Your Honor, I have here S for identification. I would like to have the witness——

The Court: Do you wish it placed before the witness?

Mr. George C. Finn: Yes.

The Court: Hand it to the clerk and the clerk will place it before the witness.

Please conduct your examination from the lectern. What [787] question do you wish to put to the witness?

Q. (By Mr. George C. Finn): Mr. Hiller, would you identify the document, please, as stated in Exhibit S, and what it purports to be?

A. It purports to be a letter written by Mr. Frazier, Chief of the Surplus Property Utilization Division, to the Civil Aeronautics Administration, dated May 7, 1952.

The Court: Did you ever see it before?

The Witness: I don't recall. I will have to read it first, sir. I may have read it, sir.

(Testimony of Manuel B. Hiller.)

Q. (By Mr. George C. Finn): Do you recall having read it? You may have read it?

A. I may have read it. It may have been in our files.

Q. It may have been in your files. Would you care to read—I believe, the second paragraph of that?

Mr. George C. Finn: May I examine it, your Honor?

The Court: You may.

Any objection to the offer of the letter in evidence?

Mr. Abbott: No objection, your Honor.

The Court: Stipulated to be genuine and in all respects what it purports to be?

Mr. Blackman: So stipulated.

The Court: It may be received in evidence if you wish to offer it, Mr. Finn. Do you wish to offer the letter?

Mr. George C. Finn: Yes, your Honor. [788]

(The document referred to, marked Defendants Finn Exhibit S, was received in evidence.)

The Court: It is in evidence now.

Mr. George C. Finn: May I ask the witness to read the second paragraph, your Honor?

The Court: Have you read the second paragraph, Mr. Hiller?

The Witness: Yes, sir.

The Court: The witness has read the second paragraph. What is your next question?

(Testimony of Manuel B. Hiller.)

Mr. George C. Finn: Read it out loud, your Honor.

The Court: No. We can all read it. We don't have to have him read it. The jury can take it to the jury room and you can read it to the jury in your argument.

Q. (By Mr. George C. Finn): Did you supply any information to Mr. Frazier to the effect that the contention stated in that second paragraph was the contention of the Federal Security Agency?

A. No, sir. I discussed that matter with Mr. Frazier, as I recall, for the first time only after my return to the agency in 1953. This letter is dated May 7, 1952.

Q. Would you state, Mr. Hiller, that the information contained in that paragraph is presently your contention?

Mr. Abbott: Objection, your Honor. The witness' contention is immaterial. [789]

The Court: Sustained. Lawsuits are made of contentions. We are interested in facts.

Mr. George C. Finn: This contention of the Federal Security Agency—

The Court: It doesn't matter whose contention it is. We are interested in facts, not contentions.

Q. (By Mr. George C. Finn): Is there anything, Mr. Hiller, in connection with this subject aircraft in suit that sustains such a contention stated in paragraph 2?

Mr. Abbott: Objection, your Honor.

The Court: Sustained.

(Testimony of Manuel B. Hiller.)

Q. (By Mr. George C. Finn): But you didn't supply any information whatsoever, any kind, nature, manner or form that would lead Mr. Frazier to believe, to represent the contention of the Federal Security Agency as stated in paragraph 2?

A. I believe that is so.

Q. You didn't supply anything. Did you supply anything to the contrary that would refute statements made in paragraph 2?

Mr. Abbott: Your Honor, this is immaterial. We object to it on the ground.

The Court: Sustained.

Mr. George C. Finn: That is all, your Honor.

The Court: Any further questions of Mr. Hiller? Any [790] redirect?

Mr. Abbott: No redirect, your Honor.

The Court: You may step down, Mr. Hiller. You are excused.

(Witness excused.)

The Court: Any further rebuttal by the Government?

Mr. Abbott: We do, your Honor. We would like to next offer into evidence Defendants Finn Exhibits 7, 8, 9 and 10.

The Court: Defendants Finn Exhibits?

Mr. Abbott: Correction, K-7, -8, -9 and -10.

The Court: Any objection to Finn Exhibits K-7, -8, -9 and -10? Those exhibits are on page 4 of the list at lines 8 to 14, Mr. Clerk, the list of exhibits filed October 27, 1954.

Mr. Blackman: Could we be heard at the proper time?

The Court: You have an objection to the offer?

Mr. Blackman: Yes, your Honor.

The Court: I suggest you withdraw that and offer it at another time.

Mr. Abbott: May I withdraw it until the end of the afternoon session?

The Court: Yes. Is there anything further? Do you have any more witnesses to call?

Mr. Abbott: Yes, your Honor.

The Court: How long will the examination [791] take?

Mr. Abbott: Direct examination will take approximately one hour.

The Court: One hour?

Mr. Abbott: Yes, your Honor.

The Court: Cut that in half and we will hear him tomorrow morning at 9:30.

Mr. Abbott: I will do my best to reduce it, your Honor.

The Court: 30 minutes. We have to put some limit on this, going over and over on this.

We will take the recess at this time. Is there any objection by any member of the jury to reconvene at 9:30 tomorrow?

Then, before we separate, I would admonish you of your duty not to converse or otherwise communicate amongst yourselves or with anyone else upon any subject touching the merits of this trial and not to form or express an opinion on this case

until after it has finally been submitted to you for your verdict.

You are now excused until tomorrow morning at 9:30.

(Whereupon the jury retired from the courtroom.)

The Court: Let the record show that the jury have retired from the courtroom.

What is the objection to the Government's offer in evidence of Exhibits K-7, -8, -9 and -10? Those are Defendants Finn Exhibits K-7, -8, -9 [792] and -10.

Mr. Blackman: If the court please, the offered exhibits relate to letters, interdepartmental letters of the Federal Security Agency and the Civil Aeronautics Administration which appear in the file of the aircraft in suit.

The Court: Whose file?

Mr. Blackman: The Civil Aeronautics Administration file of the aircraft in suit.

The Court: Let me interrupt you. What is the purpose of the offer? Perhaps we should have that first.

Mr. Abbott: The very inference, your Honor, which could be conceivably drawn from the line of cross-examination from Mr. Blackman, is there was no action by the Government with respect to the flight or operation of the aircraft in suit by the defendants Finn. The four documents offered, which are a part of the official file, and in fact they have been duly certified by the Administrator and fur-

nished under certificate to the defendants Finn, and are equally available to any member of the public, and are a part of the official file maintained with respect to the aircraft in suit. Those documents show on their face the Civil Aeronautics Administration was taking action, and the inference may be drawn, at the instance of the Federal Security Agency, to give notice to the world, and possibly to stop the flight of the aircraft in question.

Mr. Blackman: May I be heard on that, your Honor? [793]

The Court: Yes. I will understand your position better knowing the Government's purpose.

Mr. Blackman: What counsel has overlooked stating and bringing out is that those letters and messages are in no way binding upon anyone. They are nothing but interdepartmental correspondence between those two agencies.

According to the Civil Aeronautics Administration Act of 1938, only specified types of documents may be filed which constitute recorded notice to the world, and those documents are set forth. Counsel is aware of the fact that these documents are not of the type which are specified in the Act. Counsel, I feel, is also aware of the fact that they are acknowledged in the manner required by the Act so as to be entitled to recognition and that without a statute which expressly makes them documents which are notice to the world, they can have no such significance. Therefore, as interdepartmental correspondence and memoranda, they are binding upon no one here at this trial that I know of. I have no

question of their authenticity, but they are not binding upon the defendant International Airports, Inc. The Act speaks for itself in that regard.

Mr. Abbott: Counsel perhaps overlooks the fact, your Honor, he has brought out on cross-examination of Mr. Hiller that Mr. Hiller knew of no action taken by the Federal Security Agency to ask the Civil Aeronautics Administration to do [794] something about the registration of aircraft or prevent its flight, or that Mr. Hiller knew of no particular action within the Civil Aeronautics Administration, thus creating the inference in the mind of the jury that no one in the Government has done anything, until the lawsuit is filed; whereas, the proper documents show a great deal was done.

The Court: The objection is overruled. Defendants Finn Exhibits C-7, -8, -9 and -10 are received in evidence.

Mr. Abbott: Thank you, your Honor.

(The documents referred to, marked Defendants Finn Exhibits C-7, -8, -9 and -10, were received in evidence.)

Mr. Blackman: Your Honor, may we have an instruction to the jury to the effect that the law does not make those documents recorded notice to the world?

The Court: You may submit an instruction, any instruction you wish. You draft it and submit it tomorrow morning at the opening of court, and I will entertain it. I expect to instruct the jury fully

upon all the issues of law. But don't leave it to me to draft the instruction.

Mr. Blackman: I never have. I certainly intend to draft such an instruction.

The Court: I expect you all to burn a little midnight oil and go over this special verdict, and I want to hear any objections you have, or any corrections, at 9:30. If I don't hear from you then, I won't hear from you later on the subject. [795]

Mr. Abbott: May we at that time also, your Honor, submit any objections to proposed instructions?

The Court: You may. I had hoped to have by now the copies of some of the proposed instructions. It may be that my secretary will have them, if she doesn't have them now, she will have them the first thing tomorrow morning.

Now, is there anything further?

Mr. Abbott: There is one further matter, your Honor. I understood Mr. Nelson would propose the stipulation relating to the statutes under which the School District has been organized.

The Court: I suggest you gentlemen work them out and propose them in front of the jury.

Now, this reception of evidence just made, you will wish to renew that tomorrow morning in the presence of the jury. Evidence should be received, of course, in the presence of the jury. I shall expect you to remember to offer it.

Mr. Abbott: I will do so, your Honor.

Mr. Blackman: For the sake of the record, may

we state the grounds of objection, being hearsay, and no proper foundation laid?

The Court: You will have an opportunity to state your objection. You may state your objection in the presence of the jury. If you do not restate it, I will assume that you still reserve it. [796]

Mr. Nelson: If the court please, I have a supplement to our memorandum of law in answer to this estoppel argument which has come in, which I would like to file with the court at this time.

The Court: Very well. You may. Have you served counsel and all the parties?

Mr. Nelson: May the record show we are serving counsel at the present time, your Honor, and also parties, the defendants Finn?

Mr. Abbott: May the Government also serve a reply memorandum of law, your Honor?

The Court: You may.

Mr. Abbott: And file it.

The Court: Gentlemen, don't give me any more dim carbon copies. There is just no excuse for that. If you have any dim carbon copies which are hard to read, keep them and let your secretary read them.

Mr. Abbott: I am now serving each counsel, and parties not represented by counsel.

The Court: I should reject this brief of the Government. I have told your office that any time any document is written with this elite typewriter, which should be abolished, they should be written entirely in caps. This is a fairly clear copy. Now, I shall undertake to read it.

Mr. Abbott: We appreciate that, your Honor. We are [797] taking steps to replace the old——

The Court: You tell your stenographer to put it on caps and leave it on caps. They can't throw those elite typewriter out completely.

Mr. Abbott: They are being replaced.

The Court: Do you know what that does to a human being's eyes that has been working all day? Just look at it. It is enough to make your eyes cry just to look at it, much less read it.

Anything further, gentlemen?

George Finn, you may come to the bar, now, and show cause why you should not be held in contempt of court. You may stand at the lectern.

Mr. George C. Finn: The only thing I can say, your Honor, is that I had no intent, any manner, shape or form, to show any contempt to the court. I have nothing but respect for the court, your Honor, and I have always had respect. And I hope I have always showed respect for the court.

The Court: Well, of course, the question is here whether you did that designedly and intentionally to get before the jury in an improper manner the fact that, if it be a fact, that the Government had offered you some sum in compromise.

Mr. George C. Finn: No, your Honor. I had no intent of that at all. I was trying to clear up what appeared to me on the stand an insinuation that I had offered a bribe [798] to Mr. Bradley at this meeting, and in order to identify such an insinuation was impossible and ridiculous, I wanted to point out to Mr. Bradley that I wouldn't offer him

\$2,000 if I wouldn't have, after two years or a year of litigation, I wouldn't even accept the offer of the Government to give me \$2,500, get my airplane back and cancel the \$198,000 lawsuit. This is the impression I wanted to carry to Mr. Bradley, that if he had any thought in his mind, and any affidavit that were supplied to the Government, to the respect that I offered to pay money for a bill of sale that would allow me to register an airplane, that it was ridiculous.

The Court: You wish to be sworn and take the stand?

Mr. George C. Finn: Yes, your Honor.

The Court: I am not compelling you. You may if you feel so advised.

Mr. George C. Finn: Yes, your Honor.

The Court: Very well. You may come forward.

Mr. George C. Finn: May I make a statement prior to that?

The Court: Yes.

Mr. George C. Finn: Your Honor, I had learned some two months ago, whether it was what we call scuttlebutt or rumor, that the Government had an affidavit that I offered Mr. Bradley, or offered someone in Washington, \$2,000 to get this [799] airplane.

The Court: A bribe?

Mr. George C. Finn: Yes, your Honor.

The Court: I haven't heard any suggestion about it.

Mr. George C. Finn: It is outside, though, your Honor, where I got my information.

The Court: So, you can answer here in the presence of the jury?

Mr. George C. Finn: No, your Honor. I didn't concern myself with the jury. I concerned myself only with Mr. Bradley, the presentation and insinuation, and I still maintain that if we look at the record we will discover there is an insinuation in the record I offered Mr. Bradley the money——

The Court: Has the Government made any contention?

Mr. Abbott: Never, your Honor. And this is the first time it has occurred to me that Mr. Finn might so construe the evidence. Certainly it was never intended to suggest that Mr. Finn made the offer to Mr. Bradley in his individual capacity, but only as a Government officer who Mr. Finn thought would accept the money on behalf of the Government.

The Court: You wish to take the stand?

Mr. George C. Finn: In the last statement, I offered to check the record as to the question asked by Mr. Abbott while I was on the stand. "Did you ever offer Mr. Bradley?"—and I believe it was Mr. Bradley or a Government official, words to that effect —"\$2,000"? [800]

The Court: I recall the testimony very well. But I didn't understand it was even suggested that it was a bribe.

Mr. George C. Finn: The question was, to me, suggestive, and based upon the fact that I had heard rumors that an affidavit had been presented that I had offered this to a Government official, and

that it would be presented in court, I was aware of it when it was presented.

The Court: The Government makes no such contention and disavows any such contention. I haven't heard anyone else make any suggestion about it. I heard the testimony. I received no such suggestion or intimation from the testimony.

Mr. George C. Finn: I may be a little hypersensitive as to certain actions taken by the Government, and I propose that I can prove that equal misrepresentations were made in the past.

The Court: You wish to take the stand?

Mr. George C. Finn: Yes, your Honor.

The Court: You may be sworn if you so desire.

GEORGE C. FINN

called as a witness in his own behalf, being first sworn, was examined and testified as follows:

The Clerk: State your name.

The Witness: George C. Finn.

The Clerk: Will you be seated, Mr. Finn? [801]

The Court: Do you wish to interrogate the witness?

Mr. Abbott: I will endeavor to.

Direct Examination

By Mr. Abbott:

Q. What is your age, Mr. Finn? A. 40.

Q. What is your formal education?

A. Four years of college, three years medical school and the Air Force, six and a half years.

(Testimony of George C. Finn.)

Q. Will you state briefly what experience in litigation you have had?

A. I have been in court every day, it seems. I mean——

Q. Passing over the litigation which concerns us here, the United States vs. Finn, what other litigation have you participated in?

A. I was charged with contempt of court and tried and acquitted. I was charged with the Dyer Act, transporting stolen property across the state line, in foreign commerce, namely, C-46 aircraft, to the Republic of Mexico. And they failed to return on those. I was charged with assault, impeding and intimidating a Federal officer, and found [802] guilty.

Q. Was that a trial before a jury?

A. Yes, sir.

Q. Have you been in civil litigation in the eastern part of the United States? A. Yes, sir.

Q. What actions did you participate in in the eastern part of the United States?

A. An attorney tried the case. I didn't participate, unless——

Q. As a party?

A. As a party, in an action on a C-47 aircraft.

Q. Were you yourself present in court during that proceeding? A. Yes, sir.

Q. Was that tried by a jury or by the court?

A. No, sir; by the court.

Q. Were there one or two actions relating to a C-47 tried in Connecticut, Mr. Finn?

(Testimony of George C. Finn.)

A. One action.

Q. Was there any second action relating to that same airplane?

A. No, sir; not that I recall.

Q. Was there an action in which you participated entitled "George Finn vs. Roosevelt Field"?

A. That was the same action. [803]

Q. Was there an action in which you participated entitled, "George Finn vs. Mansdorf, et al."?

A. That was the same action.

Q. Were there two separate trials?

A. There was only one trial.

Q. Was there any other judicial proceeding in which you have been a party, that you haven't described to the court?

A. I don't think so. I don't recall any.

Q. Mr. Finn, when you made the statement, in substance or effect, that the Government had offered \$2,500 in settlement of the action in suit, were you referring to an offer to yourself, or to some other party?

A. Well, that offer was made through a conglomeration of parties. It included a boiling down of offers made. I believe Mr. Blackman made an offer to help settle this suit. I believe that there was Clyde Downing involved. There was an offer by a Congressman to take a third of the airplane. Well, there was an offer by—

Q. I am referring to the offer, Mr. Finn, which you have described.

A. This was boiled down.

(Testimony of George C. Finn.)

The Court: We are talking about the offer referred to in the presence of the jury.

The Witness: The \$2,500 was made in Mr. Binns' office.

Q. (By Mr. Abbott): To whom? [804]

The Court: Is that the offer you referred to before the jury this afternoon?

The Witness: Yes, sir.

The Court: That is the offer we are interested in.

Q. (By Mr. Abbott): An offer made by whom to whom, Mr. Finn?

A. Made by Mr. Binns to me on the basis of the prearrangements that were made through Clyde Downing, that finally got up to Mr. Binns' office. And he said——

Q. Now—pardon me. If you haven't finished, go ahead.

A. He said, or, I pointed out to him that these aircraft were sold for \$5,000.

He said, "Well, what about \$5,000? You owe the school \$5,000. We can get Mr. Blackman"—he didn't say "we can get Mr. Blackman—he said, "I believe Mr. Blackman had offered to loan the \$5,000"—this is my recollection of the conversation—"and we would discount it from the school," and since we hadn't paid the school, it really wouldn't cost us anything, providing the school went along with that.

And I said, "Why 5,000, Mr. Binns? I have proof, Mr. Binns, that these airplanes were sold for \$2,500."

(Testimony of George C. Finn.)

He said, "Well, if you can show me that, we will make it 2,500."

I said, "Then we will get the plane back, and cancel the [805] suit."

He said, "I will forward that on to Washington."

Q. Who was to pay the \$2,500 to whom, Mr. Finn?

A. They never got down to a concrete proposal, because I refused.

Q. Were you to pay or to receive the \$2,500?

A. To pay it, or no one offered me any money. They offered, I believe, the Government, that it could be settled by a payment commensurate with other aircraft that had been disposed of for that small amount.

And I said, "Well, now, I don't owe it. I did my business with the school, and if the Government has got any money coming, they can get it from the school."

Q. Mr. Finn, in the course of your experience in jury trials, have you observed that there are certain matters which are brought before the jury, and certain matters which are presented to the court in the absence of the jury?

A. Only one observation I made of that is when we had a jury trial. I only had one jury trial. That was in the criminal action, when we arrested Mr. Waters, and during the course of that trial the Government wanted to take some evidence out of—take some evidence out of the file, and they asked

(Testimony of George C. Finn.)

that the jury be excused, and they removed the evidence, and then brought the jury back in.

Q. Didn't you observe in the course of that trial on [806] many occasions that the court would excuse the jury in order to have certain matters presented to the court?

A. I don't recall that they did it more than one time.

Q. Weren't there several occasions when the jury was excused and arguments on evidence were made before the court—not evidence, but argument and proffers of evidence were taken up by the court?

A. I don't recall, but I do recall specifically that this evidence was removed from the file. I could not understand what was going on, and I said, "Gosh, they are taking the evidence out of the trial, and the jury isn't there."

Q. Mr. Finn, weren't there a number of occasions in the course of that prosecution for assaulting a Federal officer, when the jury was expressly excused by the court, so that the lawyers might properly present matters that the jury should not hear?

A. I can review the file.

Q. You were present during the entire trial, weren't you?

A. Yes, sir.

Q. And you observed everything that occurred?

A. Yes, sir.

Q. Did you hear your attorney argue a motion for dismissal of the indictment?

A. Yes, sir. [807]

(Testimony of George C. Finn.)

Q. At the conclusion of the Government's case?

A. Yes, sir.

Q. And was that argument before the jury?

A. I don't recall.

Q. You are in fact aware, are you not, Mr. Finn, that there are many matters which may not properly be presented to a jury in the course of a trial, and if they can be presented at all, they may be heard only by the court?

A. I believe that is true. I don't know what they are, though.

Mr. Abbott: I have no further questions, your Honor.

The Court: Didn't you know, before you made that statement in the presence of the jury this afternoon, that an offer in settlement was one matter that could not be brought before a jury?

The Witness: No, your Honor, I did not. I didn't know that couldn't even be brought into the courtroom. In fact——

The Court: It was your thought, was it, that any time any party offered to compromise a suit, even out in the hall, that it could be brought right in front of a jury and they be told about it?

The Witness: No, I didn't even consider it, your Honor. You say an offer of compromise?

The Court: An offer of settlement.

The Witness: These people have been talking to us about [808] settlement, not compromise.

The Court: Didn't you tell the jury this afternoon——didn't you state in front of the jury that the

(Testimony of George C. Finn.)

Government had offered you \$2,500 in settlement?

A. I believe I used the word "settlement," did I, "to settle this case"? Yes, I believe I said that, yes, your Honor.

The Court: Didn't you say the Government offered to pay you \$2,500?

The Witness: No, sir. That it was offered for me to pay the Government. The Government never offered me anything.

The Court: You didn't state it either way, as I recall it, in the presence of the jury. You stated the Government offered to settle the case for \$2,500. Wasn't that, in substance, what you said?

The Witness: I meant to state, if I didn't say it—I don't remember exactly the words, but I mean what I had in mind was that the Government offered me to give them \$2,500, and then they would give me the plane back and cancel the lawsuit, and my position was that if I was to give the Government \$2,500, and wouldn't do so, why would I give this two or three thousand?

The Court: Is there anything further anyone wishes to present?

(No response.) [809]

The Court: Unless you wish me to decide this tonight, I shall not do so. I will think it over tonight, and I want the reporter to read to me precisely what you said. I was so amazed at the statement you made in the presence of the jury that I am not sure that I remember precisely what you

(Testimony of George C. Finn.)

said, but my understanding of it was that the Government was going to pay—under this transaction you mentioned, that the Government had offered to pay you \$2,500 in settlement of this case.

The Witness: No, your Honor.

Mr. Charles C. Finn: We might have taken that.

The Court: And instead of you offering to pay Mr. Bradley anything, that far from it the Government had offered you. In any event, the reporters' notes will tell the story, and unless you insist upon its being determined tonight, I will postpone it.

The Witness: Your Honor, I wish you would decide the thing in your own best judgment, and I am sure you will understand the problem. That isn't my problem.

The Court: Unless you wish it decided tonight, I will decide it tomorrow.

The Witness: Your Honor, whenever you wish to decide it. I don't wish it decided tonight for any reason whatsoever.

The Court: Very well. Then you will return tomorrow morning at 9:30. [810]

Anything further before court adjourns?

Mr. Abbott: Nothing further, your Honor.

The Court: The trial is recessed until tomorrow morning at 9:30.

(Whereupon, at 5:45 o'clock p.m., Wednesday, November 3, 1954, an adjournment was taken until 9:30 o'clock a.m., Thursday, November 4, 1954.) [811]

Thursday, November 4, 1954; 9:50 A.M.

The Court: Are there ex parte matters?

In the case on trial, let the record show the jury are present.

You may call the Government's next witness in rebuttal.

Mr. Abbott: At this time, your Honor, the Government renews the offer of Defendants Finn Exhibits K-7 through -10, K-7, -8, -9, and -10.

The Court: Is there objection?

Mr. Blackman: No objection. Your Honor, we have submitted instructions pursuant to the court's leave granted yesterday.

The Court: Very well. The exhibits offered are now received in evidence.

(The documents referred to, marked Defendants Finn Exhibits K-7 through K-10, were received in evidence.)

Mr. Abbott: Two of those four, your Honor, are short and immediately pertinent to the matters last covered in examination. May they be read to the jury?

The Court: Yes.

Mr. Abbott: Ladies and gentlemen, I am now reading from Finns Exhibit K-7, which appears to be a certified copy of a teletype written by the Civil Aeronautics Administration, [815] addressed to the Los Angeles office, originating in Washington and dated November 2, 1951.

"Please advise name and address registered

owner Curtiss C-46A, registration No. N-111H, Serial 1-232. This aircraft is one of the aircraft disposed of by Federal Government to Educational Institutions. Have reason to believe aircraft was sold illegally Arvin School, Arvin, California." Signed "Marshal, 6-583."

K-10 is a teletype written by the Civil Aeronautics Administration, originating in Washington, addressed to "C.A.A., Los Angeles," and reads as follows:

"Dated 11-6-51.

"Evidence of ownership by Vineland School District of Curtiss C-46A, Serial 1-132, N-111H, acceptable for purpose of registration, is on file. Controversies over the ownership of aircraft are not for determination by the C.A.A. but are for determination by a court of competent jurisdiction in accordance with the local laws. Reference Section 501(F) Civil Aeronautics Administration Act."

Those two documents read are accompanied by the certification of the Secretary of Commerce to the effect that they are documents on file with the Civil Aeronautics Administration relating to the aircraft in suit.

The Government now calls Mr. Batchelor in rebuttal. [816]

GEORGE E. BATCHELOR

called as a witness on behalf of the Government in rebuttal, having been previously duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Have you been sworn, Mr. Batchelor?

The Witness: Yes, sir.

The Clerk: What is your full name?

The Witness: George E. Batchelor.

The Clerk: George E. Batchelor. Be seated, please.

Mr. Abbott: May it please the court: Mr. Wallace is present in court, and we have agreed upon a stipulation. I now have authority for presentation of that stipulation to the court. For his convenience, would it be possible to present the stipulation now, or shall we wait until the recess?

The Court: I will leave that to you, gentlemen.

Mr. Abbott: We are prepared to do it now, your Honor, and I think it may be properly presented now.

The Court: Any objection?

(No response.)

The Court: Very well.

Mr. Abbott: It is stipulated by and between the plaintiff and the defendant, Seaboard Surety Co., that judgment to be entered in this cause shall provide, in part, that the [817] defendant Seaboard Surety Co., has no right, title or interest in or to

(Testimony of George E. Batchelor.)

the aircraft in suit, and it is further stipulated that said judgment shall also provide that the plaintiff shall not recover costs against the defendant Seaboard Surety Co., and that the defendant Seaboard Surety Co., shall not recover costs as against plaintiff. Is that satisfactory, sir?

Mr. Wallace: So stipulated.

The Court: Very well. The stipulation will be approved, and you gentlemen will reduce it to writing, and let your stipulation express disclaimer by the Seaboard Surety Co., and dismissal of the action by the Government as to the Seaboard Surety Co.

Mr. Wallace: Thank you, your Honor.

Mr. Abbott: It was felt, your Honor, appropriate to use the stipulation for judgment procedure in lieu of dismissal, and Mr. Wallace has agreed to that procedure. The result will be the same.

The Court: Do you wish an adjudication upon the merits?

Mr. Wallace: As against the Government, your Honor, Seaboard Surety Co. makes no claim or claims for or against any of these named defendants. We waive any claim to the airplane.

The Court: Very well. You wish to have an adjudication on the merits as to the interests? [818]

Mr. Wallace: That is satisfactory, your Honor.

The Court: That may raise some complications. I would suggest that you provide in the stipulation that Seaboard disclaims any interest in the airplane, on the chance that the court may adjudicate that

(Testimony of George E. Batchelor.)

it has no interest in the airplane, without costs. Limited to that, then, there is no attempt or apparent attempt on the part of Seaboard to say where the title is.

Mr. Abbott: That is my understanding, your Honor; simply that they disclaim, and that the court may in fact find it has no interest in the aircraft.

The Court: Very well. If you gentlemen will submit it in writing and present it to be approved.

Mr. Abbott: We will do so, your Honor, and I will represent to the court that the stipulation last made is made with the authority of the Attorney General.

The Court: Very well.

Q. (By Mr. Abbott): Mr. Batchelor, are you the only employee or agent of the defendant International who has dealt with the defendants Finn in connection with the aircraft in suit?

A. Well, I think that I have handled all the negotiations with them relative to this C-46 in suit.

Q. Both before and after August 31, 1951, sir?

A. To the best of my knowledge, yes, sir. [819]

Q. And even up to the present time; is that correct? A. Yes, sir.

Q. And can you state—

A. Other than technical matters relative to specifications on the aircraft.

Q. But have all negotiations relative to possession of the aircraft been conducted by you, acting

(Testimony of George E. Batchelor.)

on behalf of International in your dealings with the defendants Finn?

A. I think so, yes, sir.

Q. Has there been at any time any consent by International, written or otherwise, to possession of the aircraft on the part of the defendants Finn after May 25, 1952?

A. Well, there has been no consent on the part of International to their possession of the aircraft up to approximately two weeks before they removed it from International's hangar.

Now, I am not sure of that date at this time, but it would be in the latter part of May or the first part of June.

Q. Was there consent on the part of International to waive brief periods of possession in the month of May on the part of the defendants Finn?

A. They were given permission to do some work on the airplane outside the hangar, but they signed a statement that was to the effect that they acknowledged International had [820] and retained possession of the airplane.

Q. And what was the approximate total duration of their possession or actual physical possession pursuant to that arrangement?

A. Well, I don't—I am no attorney, but we didn't consider that they had possession. The plane was still on International's property, and we gave them permission to work on it, and to be in and around it, and those periods of time, well, I would

(Testimony of George E. Batchelor.)

say they were all within intervals of a period of three weeks, approximately.

Q. There has been testimony in this cause that the aircraft was removed to another point on the air strip at Burbank on May 25th. Has International ever consented to possession of the aircraft by the Finns—— A. No, sir.

Q. ——after that time? A. No, sir.

Q. You are confident that if such consent occurred, it would be known to you?

A. Yes, sir.

Q. Are C-46A aircraft still in use commercially?

A. Yes, sir.

Q. Are they widely used? Well, let me put the question this way: Flying Tigers use a large number of C-46As at the present time, do they not? [821]

A. No, sir.

Q. Do they use C-46s? A. Yes, sir.

Q. Does Slick use C-46s? A. Yes, sir.

Q. And there are other companies which at the present time are using C-46s, Mr. Batchelor?

A. No, I wouldn't say—you see, there are two different types of C-46s. There is the -A and -D, which is considered one type, and the -E and -F, which are another type; and the -A and -D are only approved for a take-off weight of 45,000 pounds, where the -E and -F are approved for 48,000.

Well, on freight runs the Slick and Tigers use all -E and -F. In fact, I think they are all -Fs. To my knowledge, the Tigers have only one C-46A or -D aircraft.

(Testimony of George E. Batchelor.)

Q. Is that in commercial use? A. Yes, sir.

Q. Was it your intention in August of 1951, when you were dealing with the Finns, to lease the aircraft in suit, and to operate it commercially?

A. We were going to sub—it was our intention to lease it from the Finns, and then to sublease it to other operators that we could sign a contract with to do all maintenance work on the aircraft.

Q. Yes. And those sublessees, those other operators [822] would, according to your intention as of that time, use the aircraft for commercial purposes; is that correct? A. Yes, sir.

Mr. Abbott: No further questions of this witness, your Honor.

Cross-Examination

Mr. Nelson: If the court please, we would like at this time to request permission of the court, while Mr. Batchelor is on the stand, to reopen for approximately five questions concerning damages, which have just come to our attention, in submitting the School District's case.

The Court: Very well. You may reopen the Vineland Elementary School District's case in chief for that purpose.

Mr. Nelson: Thank you, your Honor.

Q. (By Mr. Nelson): Mr. Batchelor, you have testified earlier as to your knowledge of the subject aircraft and its condition, have you not?

A. Yes, sir. [823]

(Testimony of George E. Batchelor.)

Q. You did see the aircraft in suit in 1950 on a visit to the School District?

A. Yes, sir, twice.

Q. You made a formal and detailed inspection of the aircraft at International when it was landed there by the Finns? A. Yes, sir.

Q. Can you give us an estimate of the valuation that you would place upon that aircraft as a commercially salable aircraft on February 28th of 1951?

Mr. Abbott: Objection, your Honor. This witness has not been shown to have the qualifications to testify as to that point of time.

Mr. Nelson: I believe, your Honor, that the fact that this particular witness has inspected the aircraft, both in and out, when it was landed in October of 1951 at his field, and the fact that he looked over the plane in 1950 would give him excellent qualifications for those purposes. He has seen the plane as it was used at the School District, and also as it was when it was flown in, and he had more opportunity than any other experts provided by any party here to know the exact condition of the aircraft and the work done by the Finns on the plane.

The Court: The objection is to any showing as to his qualifications as to the time stated. [824]

Perhaps you can lay a better foundation. If there is any doubt as to the foundation, I would surely lay it.

Mr. Nelson: It just appeared to me that the

(Testimony of George E. Batchelor.)

record has already set such foundation, and I didn't want to go into it in detail.

The Court: Please read the pending question, Mr. Reporter.

(The question was read.)

The Court: Do you have an opinion as to the fair market value of the airplane in suit as of that date?

The Witness: Yes, sir.

The Court: That is what you want to ask him?

Mr. Nelson: Yes, your Honor.

The Court: What is that opinion?

The Witness: Between \$7,000 and \$8,000.

Q. (By Mr. Nelson): And would you state the basis for this opinion, Mr. Batchelor?

A. Well, prior to the Korean War C-46As and Ds in the condition of this aircraft had no value, and the Korean War started in the summer of 1950, and then there was a slow rise in the value of all aircraft. In fact, there was a lag until the four-engine aircraft were removed from operation in this country and put on overseas airlifts, and at that time the value of twin-engine aircraft increased greatly. And along in the winter, before the heavy flying [825] started in spring and summer, the value still hadn't increased too much. And the big jump in prices occurred in the summer of 1951; in the fall.

Q. Now, the valuation which you have testified

(Testimony of George E. Batchelor.)

as being your opinion here, was that based upon a commercially flyable aircraft?

A. No. That would be based upon the aircraft as I saw it the last time in 1950, but without any restrictions of any type on the title; one that could be used in commercial operation.

Mr. Nelson: That is all I have, your Honor.

Redirect Examination

By Mr. Abbott:

Q. Mr. Batchelor, when you talked with George Finn and Charles Finn in the month of August, 1951, you and they discussed the aircraft that you had seen at Vineland, and you recalled then the condition you had observed, is that correct, sir?

A. Yes, sir. And they told me they had done some work on the airplane, or were doing some.

Q. Did they tell you in August, 1951, they had done some work on the plane?

A. I said they told me they had done some work or going to do some work, or doing some. [826]

Q. Did they show you pictures of the aircraft then? A. My recollection is that they did.

Q. Did those pictures show the airplane to be in the condition which you had observed when you were at Vineland in 1950?

A. Well, I can't recall that to any great detail. I knew that the cost, there would be a large cost and a large amount of time spent in getting the airplane into a flyable condition, large cost in money

(Testimony of George E. Batchelor.)

and time, and fly it down to Lockheed Air Terminal. And our discussions included that.

Q. Do you recall whether or not the pictures shown to you in August of 1951, of the aircraft in suit, showed it to be in the same condition which you had observed in 1950?

A. No, I don't. I don't recall.

Q. It is true, however, that you offered \$55,000 for the aircraft in the course of that discussion of August, 1951, is it not?

A. My recollection is that it is not.

Q. Did you make any offer?

A. As I remember it, we offered \$50,000, delivered to Lockheed Air Terminal, and subject to our inspection at Lockheed.

Q. Did you agree with the testimony of the opinion previously given that the cost of putting that airplane in flying condition was \$5,000, Mr. Batchelor? [827]

A. I would think it would be slightly more than that, but not enough to quibble about.

Q. Isn't it true, sir, that in February of 1951, American troops were fighting in Korea and a large number of transport aircraft were being then used to carry munitions and supplies to Korea?

A. Not a large number.

Q. Wasn't there, in February of 1951, a search being made in the industry for transport aircraft to carry munitions and supplies to Korea?

A. Well, as I recall it, the big increase in value of aircraft occurred during the summer and fall of

(Testimony of George E. Batchelor.)

1951, and that caused the values to increase greatly. There was a lag in time there from the time the Korean War started until the transport planes got into—the operations were set up and operations commenced in the Korean air lift.

Q. When you said that the aircraft in question had no market or commercial value prior to the Korean War, did you mean that literally, that it wouldn't bring anything on the commercial market, Mr. Batchelor?

A. Well, practically nothing. I will put it that way.

Q. Then how is it that in 1950 you asked——

A. Well, wait. Let me—no, prior to the Korean War, I don't think they had any, no value at all. An A or a [828] D had no value except for, possibly, parts.

Q. Well, what value did they have for parts, Mr. Batchelor?

A. Oh, I imagine a thousand dollars, fifteen hundred dollars, \$2,000.

Q. Isn't it true that prior to the Korean War you made two separate trips to Vineland to inquire whether the aircraft in suit was for sale?

A. Well, my trips were, as I remember it, sometime in 1950. Now, I think it was about the time—the first trip possibly was just before the Korean War started, and I believe the second one was after it started.

Q. And both of them were prior to the American participation in the Korean War, were they not?

(Testimony of George E. Batchelor.)

A. Well, I don't know the exact dates involved there.

Mr. Abbott: No further questions, your Honor.

The Court: Anything further of Mr. Batchelor?

Mr. Nelson: No questions.

The Court: You may step down, Mr. Batchelor.

(Witness excused.)

The Court: The Government's next witness?

Mr. Abbott: The Government calls Charles Finn, your Honor. [829]

CHARLES C. FINN

called as a witness in rebuttal by the Government, being first sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Charles C. Finn.

The Clerk: Be seated, please.

Direct Examination

By Mr. Abbott:

Q. Will the clerk please place before the witness Defendants Finn Exhibit AX and Plaintiff's Exhibits 12-A and 12-B?

The Clerk: Here is Exhibit 12.

Q. (By Mr. Abbott): Calling your attention, first, to Finn Exhibit AX, Mr. Finn——

The Clerk: I haven't given it to him yet, Mr. Abbott.

Mr. Abbott: Oh, I am sorry.

(Testimony of Charles C. Finn.)

Q. (By Mr. Abbott): Well, calling your attention to 12-B, Plaintiff's Exhibit, do you have that before you, Mr. Finn? A. Yes, sir.

Q. There appears on that document what purports to be your signature and that of your brother. Are those, in fact, your signatures?

A. This is 12, did you say? [830]

Q. Yes.

A. I have got Exhibit 12. I don't see the B.

Q. It is a small document entitled, "Application for Registration." A. Yes.

Q. Dated April 9, 1951. A. Yes.

Q. Is your answer yes, those are your signatures, your signature and your brother's signature?

A. Yes, sir.

Q. And you are familiar with your brother's signature and able to identify it, are you not?

A. Yes, sir.

Mr. Abbott: The Government offers in evidence Plaintiff's Exhibit 12-B.

The Court: Is there objection?

Mr. Nelson: No objection.

Mr. Blackman: No, your Honor.

The Court: Received in evidence.

Mr. Blackman: I understood all of Plaintiff's 12 was in evidence.

The Court: My notes so show. What do your minutes show, Mr. Clerk?

Mr. Abbott: If I may be heard on that, your Honor, Plaintiff's 12 was a single document attached to Civil [831] Aeronautics Administration

(Testimony of Charles C. Finn.)

certificate, which certifications covered several other documents not previously put in evidence.

The Clerk: I just have 12 in evidence.

The Court: Do you have any lists showing these exhibits you are speaking of now?

Mr. Abbott: The exhibit list is up——

The Court: The exhibit list which was to be kept up to date was not kept up to date.

Mr. Abbott: Your Honor, we filed an exhibit list which was brought up to date yesterday.

The Court: Where is this morning's?

Mr. Abbott: It is being prepared by my secretary and will be brought here as soon as it is finished. She has been working on it since coming to work this morning.

The Court: Is this on any list, the document you offer now?

Mr. Abbott: It is not on any typewritten list. It is a document that appears on counsel's list.

The Court: By "counsel," you are referring to your own?

Mr. Abbott: Mine, and I have displayed it to other counsel.

The Court: Is there objection to the offer?

Mr. Blackman: No objection.

Mr. Nelson: No objection. [832]

The Court: Received in evidence.

(The document referred to, marked Plaintiff's Exhibit 12-B, was received in evidence.)

Mr. Abbott: At this time the Government offers

(Testimony of Charles C. Finn.)

Exhibit 12-A, affidavit of Peter Bancroft dated April 6, 1951.

The Court: Is that another document which appears only on some handwritten list you have?

Mr. Abbott: Each of these documents was marked yesterday, and the list is being brought up to date this morning to show——

The Court: I say, is this a document that appears on any list which the court has?

Mr. Abbott: No, your Honor. It appears on the list which will be presented to the court.

The Court: Very well. Any objection?

Mr. Nelson: No objection.

The Court: Received in evidence.

(The document referred to, marked Plaintiff's Exhibit 12-A, was received in evidence.)

Q. (By Mr. Abbott): Do you now have before you, Mr. Finn, Finns' Exhibit AX?

A. This is AX? Yes, I have.

Q. AX appears to be a photostatic copy of two documents on the same sheet, one of which purports to be a registration certificate. Do you recognize that registration [833] certificate as a photostatic copy of the original registration certificate on the aircraft described in this lawsuit as the hull?

A. Well, I haven't seen that registration certificate for a long time, but I believe it is. There is no reason to believe otherwise.

Mr. Abbott: We offer into evidence, your Honor, Finns' Exhibit AX. The offer is restricted to that

(Testimony of Charles C. Finn.)

portion of the photostat which displays the registration certificate.

The Court: Is there an objection to the offer?

Mr. Nelson: No objection.

Mr. Blackman: No objection.

The Court: It may be received in evidence.

(The document referred to, marked Defendants Finn Exhibit AX, was received in evidence.)

Q. (By Mr. Abbott): Mr. Finn, did you and your brother rehabilitate, or do some work directed towards rehabilitation of the aircraft we have described as a hull in this litigation, in the month of January and the month of February, 1951?

A. Well, we were rehabilitating that right along. Now, I think we started at the purchase of that airplane, which was in October of 1950, and we were working constantly to rehabilitate the airplane and put it in condition for flight purposes.

Q. In any event, work of that type, rehabilitation of [834] the aircraft we have called the hull, that occurred prior to April, 1951, had it not?

A. It occurred from the beginning of October—well, from the time we purchased it, on. Now, when I say “rehabilitation of the airplane,” we had to go around and get parts, and parts are difficult to find, and there is considerable time spent at all times. This was a project that we had which was in our minds constantly. While we may not have

(Testimony of Charles C. Finn.)

placed a part on every day, we were out looking for parts.

Q. I didn't ask you for detail of the work, Mr. Finn, merely some rehabilitation work was done on the hull prior to April, 1951, is that correct?

A. Yes, sir. It was done from October on.

Q. And by "October," do you mean October, 1950?

A. I believe that is the date on which we bought the plane.

Q. When you testified to rehabilitation work beginning in October, you mean October, 1950?

A. Yes, sir.

Q. Did you do any work on the plane in suit prior to the time that your brother George went to Washington, in February and April of 1951?

A. No, sir.

Mr. Abbott: I have no further questions, your Honor.

Mr. Nelson: No questions, your Honor. [835]

Mr. Blackman: No questions, your Honor.

The Court: You may step down, Mr. Finn.

(Witness excused.)

Mr. Abbott: The Government calls Peter Bancroft.

PETER A. BANCROFT

called as a witness in rebuttal by the Government, having been previously sworn, was recalled and testified further as follows:

The Clerk: You have been sworn, have you?

The Witness: Yes, sir.

The Clerk: Be seated, please.

Direct Examination

By Mr. Abbott:

Q. Mr. Bancroft, do you have a definite aircraft identified in your mind by the reference "hull," which has been used in the course of this litigation?

A. Yes, sir.

Q. Is that the only C-46 ever owned by the School District, other than the C-46 in suit?

A. The only other C-46?

Q. Yes.

A. Yes, sir. There are the two of them.

Q. Did you acquire the hull from the War Assets Administration [836] pursuant to the Surplus Property Act of 1944, as an educational transfer?

Mr. Blackman: Just a moment. If the court please, I believe that calls for an opinion and conclusion of this witness as to a matter of law.

Mr. Abbott: This is preliminary, your Honor. We can go through each step in the procedure, but the particular steps are not pertinent, only the general manner of acquisition of the aircraft.

The Court: Please read the pending question, Mr. Reporter.

(Testimony of Peter A. Bancroft.)

(The question was read.)

Mr. Nelson: If the court please, may the record show our objection joining with Mr. Blackman, and also, improper rebuttal and irrelevant and immaterial?

The Court: Sustained.

Mr. Abbott: May the Government be heard on the question of rebuttal and materiality? We feel this is a very important point.

The Court: It calls for a conclusion which this witness is not competent to express.

Mr. Abbott: May International's Exhibit T be placed before the witness, please? [837]

The Clerk: It does not seem to be here with the exhibits. Your Honor, I can't find International's Exhibit C.

Mr. Abbott: T.

The Clerk: Oh, T.

The Court: Couldn't this be arranged during a recess, Mr. Abbott, to find these exhibits, so that we don't have to sit here and wait for them to be found?

Mr. Abbott: I didn't anticipate the use of this exhibit would be necessary, your Honor.

The Court: Proceed.

Q. (By Mr. Abbott): Are you now viewing International's T, Mr. Bancroft? A. Yes, sir.

Q. Is that a document which you received at the same time that you received possession of this hull?

A. I am not certain if I received it at the same

(Testimony of Peter A. Bancroft.)

time, but it is in connection with the plane called the hull.

Q. Well, do you recognize it as a document that you received at or about the time that you received possession of the hull?

A. I don't recall when I received the document.

Q. Is it a document that you received from War Assets Administration in connection with the delivery of the hull?

A. Yes, sir.

Mr. Nelson: Objection, your Honor, to this line of [838] questioning on the ground that the method of acquisition and the means by which the District obtained the hull is not in issue in this case, and it is wholly irrelevant and immaterial, and is not proper rebuttal.

Mr. Abbott: May the Government be heard at this time, your Honor?

The Court: Yes.

Mr. Abbott: The purpose of the Government is this: We propose to show that the District received not one, but two completely flyable C-46s, and while the Government's damage is predicated upon the market value of the aircraft in suit, that, contrary to the position asserted in Vineland's case in chief, the Government is not made whole by its possession of the hull aircraft, for the Government contracted to have two complete and flyable C-46s in the possession of the District. That evidences the materiality of the inquiry.

Mr. Nelson: If the court please, I still don't see any materiality, particularly, as to the acquisition

(Testimony of Peter A. Bancroft.)

or means by which they obtained this aircraft. If the Government intends to show that the delivery of two aircraft to the District was the intention of the Government, it is a matter of argument, and, certainly, nothing to bring in and delay the proceedings in the trial.

The Court: Overruled. He may answer.

Mr. Abbott: Will you read the pending question to the [839] witness, Madam Reporter?

(The question and answer were read.)

Mr. Abbott: I didn't realize the answer had come in.

Q. (By Mr. Abbott): Among other things, International's T recites or represents or acknowledges payment of the sum of \$200. Was that sum in fact paid by the Vineland Elementary School District to the War Assets Administration?

Mr. Nelson: The same objection; immateriality, your Honor.

The Court: Overruled.

The Witness: Do you mean—would you rephrase that question, please, Mr. Abbott?

Q. (By Mr. Abbott): Did you pay \$200 to War Assets Administration in connection with the acquisition of the hull, Mr. Bancroft?

A. Our district did not pay \$200, no, sir.

Q. Was that sum paid— A. Yes, sir.

Q. —to the War Assets Administration in connection with the acquisition of the hull?

(Testimony of Peter A. Bancroft.)

A. Yes, sir, it was.

Q. At what point, geographically speaking, did you take possession of the hull?

A. At, I believe, Ontario, California.

Q. Was it flown from Ontario, California, to the [840] Vineland Elementary School District?

A. Yes, sir, it was.

Q. At the time that you took possession at Ontario, California, was the aircraft complete, including engines, instruments, and control surfaces?

A. Yes, sir.

Q. Were the engines, instruments, control surfaces, and other parts of the aircraft removed from it after its delivery at the Vineland Elementary School District?

Mr. Nelson: Objection, your Honor. I submit we are getting far afield. We are getting into irrelevant and immaterial matters. Where does this tie in to the Government's proof as to damage?

Mr. Abbott: I will be happy to explain.

The Court: What is the purpose?

Mr. Abbott: The purpose is this: The Government contends that the damage occasioned to the Government by the breach of contract alleged is the loss to the Government of the particular C-46A in suit for educational purposes. The contention of Vineland appears to be that the Government has not been damaged seriously, if at all, by that loss, because another C-46A was to have been substituted for the aircraft in suit by the defendants Finn.

The Government here shows, or will show, if

(Testimony of Peter A. Bancroft.)

permitted, that the Government placed two complete flyable C-46As in [841] the hands of the School District, both to be used for educational purposes, and that the net result of the transaction between the School District and the Finns is to leave the Government with but one aircraft for that purpose.

Mr. Nelson: If the court please, we will go along with everything that the Government has just stated. It is not the contention of the School District that the aircraft in suit is to be substituted with the other aircraft on the premises.

We agree that there are two aircraft involved, and that it was the intention of the Government that the two aircraft should remain. Our only contention as to damages is: just what was the Government damaged by the removal of the one aircraft, and has that removal occurred? It has nothing to do whatsoever with the other aircraft on the field. That aircraft still remains and is being used for educational purposes, and we do not intend ever to substitute the two.

The Court: Vineland contends that the net result if the defendants Finn comply, would be two aircraft, I take it?

Mr. Nelson: I don't follow the court.

The Court: Weren't the defendants Finn obligated under Vineland's theory to put another aircraft there to serve as a classroom?

Mr. Nelson: That is correct, your Honor. But not in this action are we contending that the replacement by the Finns of that aircraft is to take

(Testimony of Peter A. Bancroft.)

care of the damages which [842] the Government is alleging here. We still leave that open, if they can prove that the Government was injured, and we will go along with the fact that two aircraft were considered by the District.

The Court: Where is the other one?

Mr. Nelson: The other aircraft is in the District, your Honor.

The Court: What is the Government's theory? If the defendants Finn put another aircraft there, that there will not be two? I don't understand you.

Mr. Abbott: This is the Government's theory, your Honor: that before the defendants Finn arrived at the scene, sometime before, in fact, in 1948 the Vineland Elementary School District and the Government contracted for the placing of two complete and flyable C-46s, both suitable for educational purposes, in the hands of the School District. Sometime later the insides were removed from the one C-46, and it becomes a hull, stripped down to just the frame.

Mr. Nelson: We object to that as being a fact not in evidence, your Honor, and assuming something.

Mr. Abbott: Then there is a contract between the School District, on the one hand, and the Finns on the other for the sale of the C-46 in suit, which at that time remained in whole condition, and in reasonably good condition, and the Finns undertake to place a second C-46, the same C-46 that has [843] been at Vineland since 1948 in the condition in

(Testimony of Peter A. Bancroft.)

which the aircraft in suit was on February 28, 1951.

Then says Vineland, "How has the Government been hurt by the sale of the aircraft in suit, if they get another one?" And we wish to show the Government contracted for two complete aircraft.

The Court: There is no evidence to show what happened to the hull. There is no evidence to show the hull was ever anything but a hull.

Mr. Abbott: That is the evidence I would elicit, if permitted.

Mr. Nelson: That certainly is improper rebuttal, and we are not alleging here to the court in that respect that the Government is not damaged because we are getting this other aircraft back at all. If they can prove they were damaged by the removal of the subject aircraft, that is a separate and distinct matter.

The Court: Sustained.

Mr. Abbott: May the Government at the proper time make an offer of proof on this point?

The Court: Yes, the Government may make an offer of proof, or make the record on excluded evidence, pursuant to Rule 43(c), if so advised.

Mr. Abbott: Does the court desire that that record be made at this time? We are prepared to do so. [844]

The Court: It is up to the Government, whenever the Government seeks permission to make it. There is no need of detaining the jury for that. I don't expect to permit the jury to hear it.

(Testimony of Peter A. Bancroft.)

Mr. Abbott: Then we will make the record at the recess, your Honor.

Q. (By Mr. Abbott): Mr. Bancroft, will you recall again as to whether or not you had heard of the Form 65 agreement by that name prior to the time that this litigation began?

A. I can't recall hearing it by that title, no, sir.

Q. Are you certain that you have never heard of it by that title, sir?

A. I have heard of it during the court session here by that title.

Q. Prior to the commencement of this litigation?

A. No, I can't recall, no, sir.

Mr. Abbott: May the 11-page handwritten statement which I am now handing to the clerk be marked as Government's Exhibit 17, for identification?

The Court: It may be so marked.

(The document referred to was marked Plaintiff's Exhibit No. 17, for identification.)

Mr. Abbott: May I assist the witness to point to a particular passage in that rather long [845] document.

The Court: You may.

Q. (By Mr. Abbott): Mr. Bancroft, I am displaying to you Plaintiff's Exhibit 17, for identification, which appears to be a handwritten document of 11 pages, and bearing what purports to be your signature. Will you please examine that statement,

(Testimony of Peter A. Bancroft.)

and then state whether or not you signed the document in the form which it now bears?

A. Yes, sir, I signed this document.

Q. And does it appear to be in the same form which it bore at the time of that execution?

A. Yes, sir.

Q. I will call your attention particularly to the language in the middle of page 10, beginning with the words, "however, WAA Form 65," and ending with the words "in error" at the bottom of the same page, and ask you whether that language, in particular, was in the document and read by you at the time of your execution of the document.

A. Yes, sir, it was in the document, as is evident, and I read the document.

Q. Did you prepare that document, or did some other person prepare it?

A. I believe Mr. Chrisman. He is a special agent for the Federal Bureau of Investigation.

Q. Did he prepare the document in your hand? A. Yes, sir. [846]

Q. Was that preparation the result of a conference or interview with you?

A. Yes, sir, and I would like to make a statement on that. People who are familiar with these forms, and Mr. Chrisman must have been, in referring to a document by number, could refer to it that way, and I would obviously agree, but as to whether it were the agreement, No. 65, or any agreement, I don't think that is a point that I would remember.

(Testimony of Peter A. Bancroft.)

Mr. Abbott: May Plaintiff's 17 be admitted in evidence, your Honor?

Mr. Nelson: No objection, your Honor.

The Court: Received in evidence.

(The document, marked Plaintiff's Exhibit No. 17 for identification, was received in evidence.)

Mr. Abbott: May I read the portion referred to in the witness' testimony, your Honor?

The Court: You may.

Mr. Abbott: Now, reading from the middle of page 10 of Plaintiff's Exhibit 17, and I should preface this with a reference to the date, November 29, 1948:

"However, WAA Form 65 looks very familiar to me, and I am sure I must have signed one before we were ever able to buy any War Surplus material at such low prices, and for educational and [847] instructional purposes."

Q. (By Mr. Abbott): Mr. Bancroft, is the hull being used for educational purposes at this time?

A. Yes, sir, it is.

Q. Has it been refitted with engines and control surfaces?

A. It has been refitted with some surfaces, and engines, yes, sir.

Q. Is it being used as a schoolroom?

A. Only partly.

(Testimony of Peter A. Bancroft.)

Q. Are there desks and other classroom facilities in it?

A. I am not certain if there are now. I don't believe there are desks at the present time.

Q. Well, are classes, in fact, conducted in the hull, as they were in the aircraft in suit?

Mr. Nelson: Objection, your Honor, as to immateriality of this entire line of questioning.

The Court: Overruled.

The Witness: The hulk airplane at present isn't being used exactly in the same way as it was, in that we had seats and desks and had a formal classroom situation. We are using the plane now for the study of control surfaces, and we are actually doing some work on the aircraft, also by our students. [848]

Q. Are there instruments on that airplane, the hull? A. No, sir, there are not.

Q. In April of 1951 did you have dealings with the State Agency for Surplus Property, the California State Agency for Educational Use of Surplus Property?

Mr. Nelson: Objection, your Honor. It is irrelevant and immaterial as to whether he would have dealt with the State Agency.

Mr. Abbott: I can ask one question which may show the materiality.

Mr. Nelson: It is improper rebuttal, your Honor.

The Court: Sustained. Put your next question.

Q. (By Mr. Abbott): Mr. Bancroft, have you

(Testimony of Peter A. Bancroft.)

in your dealings in connection with surplus property acquisitions dealt with the California State Agency for Surplus Property——

Mr. Nelson: The same objection.

Q. (By Mr. Abbott): ——acting on behalf of the Federal Security Agency and other agencies of the United States?

Mr. Nelson: The same objection.

The Court: What is the purpose of it?

Mr. Abbott: Your Honor, I desire to show by this witness that, contrary to inferences that might have been drawn from the examination yesterday, there was an inquiry, a very prompt inquiry into the disposition of the aircraft in suit, [849] and to show——

The Court: Overruled. You may answer.

The Witness: We have conferred a number of times with the State people.

Q. (By Mr. Abbott): In general, in your conversations with the representatives of the California State Agency, they have related to the surplus property in the possession of the School District, have they not?

A. Surplus property generally, but not necessarily with regard to aircraft.

Q. Did you, in particular, have a conversation with Mr. Olson of that agency in the month of April, 1951? A. That I can't remember.

Q. Well, did you discuss with any representative of the State Agency the disposition of the aircraft in suit to the defendants Finn?

(Testimony of Peter A. Bancroft.)

A. That is quite possible.

Q. Isn't it a fact, sir, that such conversations occurred in the month of April, 1951?

A. That I can't say.

Q. Isn't it a fact that they occurred sometime in the spring of 1951? A. That I can't say.

Q. Well, do you recall any conversations with Mr. W. A. Farrell, Chief Surplus Property Officer of the State Agency [850] for Educational Use of Surplus Property in the spring of 1951, which conversations related to the disposition of surplus property in the possession of the School District?

A. Mr. Abbott, we have talked to scores of people in the agency and outside of the agency regarding these aircraft, and so far as comments or advice, that I couldn't say as to date, or when.

Q. Well, isn't it a fact, Mr. Bancroft, that in April of 1951, Mr. Olson contacted you to ask whether you had effected any sale of the aircraft in suit?

Mr. Nelson: Objection, your Honor, that is a question asked and answered. He has already stated he does not recall any such conversation.

The Court: Overruled. You may answer.

The Witness: It is possible that Mr. Olson did call, but I can't recall.

Q. (By Mr. Abbott): Now, if Mr. Olson did call, wasn't his call one relating to disposition of this aircraft in suit, Mr. Bancroft?

A. Mr. Abbott, I have stated that I don't have

(Testimony of Peter A. Bancroft.)

a memory by dates. Now, if you have information that I did talk to him, why don't you ask me?

Q. Well, I will ask you, then, did you at any time discuss with Mr. Olson the disposition of the aircraft in suit? [851]

A. That is quite possible.

Q. When? A. I don't remember.

Mr. Abbott: May the letter dated April 30, 1951, apparently signed by Peter A. Bancroft, be marked as Plaintiff's Exhibit 18, for identification, and be placed before the witness?

The Court: It may be so marked.

(The document referred to was marked Plaintiff's Exhibit No. 18, for identification.)

Q. (By Mr. Abbott): Will you examine Plaintiff's Exhibit 18, for identification, and state whether or not that is a copy of a letter prepared by you, and addressed to Mr. Farrell, Chief Surplus Property Officer, State Department of Education?

A. Yes, sir, I believe that's our letter.

Q. Does a review of that document refresh your recollection as to whether or not you did have conversations with Mr. Olson or Mr. Farrell of the State Department of Education Agency for Surplus Property in the month of April, 1951?

A. I don't think there is any question, as I stated, that I talked to him. I don't recall when.

Q. Can you tell by reference to that letter whether or not there were any conversations prior

(Testimony of Peter A. Bancroft.)

to the date of the letter, Plaintiff's 18, for [852] identification?

A. We must have been contacted by them, either personally or by letter prior to this letter of answer by us.

Mr. Abbott: May Plaintiff's Exhibit 18 be admitted in evidence, your Honor?

Mr. Nelson: We are going to object to the letter being admitted into evidence, your Honor, as being irrelevant and immaterial. Once again, I can see no connection between this and what the Government has offered to connect up as an investigation by a Federal Agency. [853]

Mr. Abbott: This is an investigation by the state agency acting on behalf of the United States, your Honor.

Mr. Nelson: There is no evidence to show that, your Honor, no foundation whatsoever.

Mr. Abbott: The witness himself has given us the evidence.

The Court: Let me see the document.

Mr. Abbott: As a second ground for materiality, the Government urges, your Honor, it bears upon the question of this witness' intention in connection with the transaction in suit.

Mr. Nelson: We submit, your Honor, that letter has nothing to do with the aircraft in suit.

The Court: The objection is overruled. It may be received in evidence.

(The document referred to, marked Plaintiff's Exhibit 18, was received in evidence.)

(Testimony of Peter A. Bancroft.)

Mr. Abbott: May the Government read the first paragraph of that document, which is short, your Honor?

The Court: You may.

Mr. Abbott: Letter dated April 30, 1951, addressed to Mr. W. A. Farrell, Chief Surplus Property Officer, State Educational Agency for Surplus Property, signed by Peter A. Bancroft.

“Dear Mr. Farrell: [854]

“At this writing all aircraft purchased by us from War Assets Administration, located on our Sunset School strip, is still being operated by us. None of these units are surplus to us, due to the fact we are still using them regularly.”

Q. (By Mr. Abbott): Isn't it a fact that this letter, Plaintiff's Exhibit 18, was prompted on your part by discussions with Mr. Olsen and Mr. Farrell of the state agency when they inquired whether or not you had disposed of any surplus property?

A. Yes, sir, it was.

Q. Weren't there further discussions in the month of November, 1951, between yourself and Mr. Farrell relative to the disposition of your surplus property in possession of the school?

A. Well, I will state again, there very possibly could have been discussions, but I don't know whether they were in November.

Q. Well, do you recall any discussion on that topic any time in the fall of 1951, sir?

A. Well, I will repeat. It is very possible I dis-

(Testimony of Peter A. Bancroft.)

cussed that matter with them, but I don't recall whether it was November or fall of 1951.

The Witness: Is this the court procedure, your Honor, to embarrass a witness with these questions? If he has the [855] information why doesn't he ask me if I wrote it?

The Court: If you don't remember, all you need to do is say so.

The Witness: Yes, sir.

The Court: Misrecollection is not an uncommon experience to any of us.

Let's move on, gentlemen.

Mr. Abbott: I am waiting, your Honor, for the document to be returned.

The Court: Mr. Nelson, you are only entitled to look at that long enough to have it pass under your observation so you may identify it, and not make a study of it.

Mr. Nelson: I did wish to read it, your Honor. It is my first view of the letter.

Mr. Abbott: May the letter of November 5, 1951, addressed to Mr. W. A. Farrell, signed Peter A. Bancroft, Superintendent, be marked as Plaintiff's Exhibit 19, your Honor? And may that document be placed before the witness?

The Court: It may be so marked.

(The document referred to was marked Plaintiff's Exhibit 19 for identification.)

The Court: Place the document before the witness, Mr. Clerk.

(Testimony of Peter A. Bancroft.)

Your question?

Q. (By Mr. Abbott): Is Plaintiff's Exhibit 19 a document [856] prepared by you, Mr. Bancroft?

A. Yes, it is.

Q. Was it prepared on the date which it bears, by you? A. Yes, sir.

Q. What is the date it bears?

A. November 5, 1951, your Honor.

The Witness: Yes, it is.

Q. (By Mr. Abbott): Was that document prepared as the result of a visit by Mr. Olsen of the State Agency to the Vineland Elementary School District? A. Yes, sir.

Q. Had Mr. Olsen, in the course of that visit, asked to look at any document or paper you might have relative to the disposition of the aircraft in suit? A. Yes, sir.

Q. And had you refused to give him access to those papers? A. Yes, sir, we did.

Mr. Abbott: May Plaintiff's Exhibit 19 be admitted into evidence?

The Court: Is there objection?

Mr. Nelson: The same objection, your Honor.

The Court: Overruled. It may be received in evidence.

(The document referred to, marked Plaintiff's Exhibit 19, was received in [857] evidence.)

Mr. Abbott: May that letter, which is quite short, be read by the Government, your Honor?

(Testimony of Peter A. Bancroft.)

The Court: Yes, it may.

Mr. Abbott: This is a letter dated November 5, 1951, addressed to Mr. W. A. Farrell, Chief Surplus Property Officer, State Department of Education, signed by Peter A. Bancroft.

“Dear Sir:

“The Vineland School District hereby wishes it known that they will provide access to any files owned by them pertaining to the recently disposed C-46 when it becomes apparent that it is necessary to provide access to these files. The reason for not wishing to disclose certain information at this time is because this information is valuable to the district as a business proposition and disclosure of this information would possibly not be to the advantage of the district. It is the full intention of the district to co-operate with any authorized agency on this matter.”

Mr. Abbott: The Government has no further questions, your Honor.

The Court: Any further question of Mr. Bancroft?

Mr. Nelson: No question, your Honor.

The Court: You may step down, Mr. Bancroft.

(Witness excused.) [858]

The Court: Any further rebuttal by the Government?

Mr. Abbott: The Government rests, your Honor.

The Court: Surrebuttal? All sides rest?

Mr. Blackman: No, your Honor. We have a very few questions of Mr. Batchelor.

Mr. George C. Finn: May I offer a stipulation, your Honor?

The Court: Speak up so we can hear you.

Mr. George C. Finn: May I offer a stipulation at this time?

The Court: You may.

Mr. George C. Finn: I offer to stipulate that in a congressional hearing in which Mr. Farrell participated, he made the following statement with regard to the disposal of the property in question——

Mr. Abbott: Your Honor, we object to the offer to stipulate at this time, and suggest——

The Court: Sustained. You may discuss it with counsel at the recess, and if they will agree to it you may make the offer. There is no necessity to make a statement and have counsel say, “We cannot stipulate.”

Mr. Nelson: If the court please, I am going to move at this time that all the testimony which has just been presented in connection with the hull be dismissed and stricken from the record, inasmuch as the Government never [859] did tie up the fact which he has stated was the reason for bringing in evidence before the court; and particularly, this matter of the state agency.

The Court: There is no need of detaining the jury to hear that motion. The motion will be denied at this time. You may renew it at some later time if you feel so advised.

Mr. Nelson: I will so do, your Honor.

The Court: Let's finish with the testimony, gentlemen.

GEORGE BATCHELOR

called as a witness in surrebuttal by defendant International Airports, Inc., having been previously sworn, was recalled and testified as follows:

The Clerk: What is your name, sir?

The Witness: George Batchelor.

The Clerk: You have previously been sworn?

The Witness: Yes, sir.

The Court: Proceed, Mr. Blackman.

Direct Examination

By Mr. Blackman:

Q. Mr. Batchelor, have you ever heard of a common reputation in your particular branch of the aviation industry to the effect that school aircraft were not permitted to be resold? [860]

A. No, sir.

Q. If there ever had been such a common reputation, were you in a position, or do you feel it would have come to your attention?

A. It normally should.

Q. And apart from a common reputation, have you ever heard of any school restrictions, restrictions on resale of aircraft owned by schools prior to the time that the Government first filed its lawsuit, or within a month or two before that time?

A. I heard a rumor, or something, about the time within—about a month after the time the airplane was removed from our hangar. Now, I have for-

(Testimony of George Batchelor.)

gotten the date the Government filed the lawsuit right now.

Q. The date of the lawsuit was July 3, 1952. The airplane was removed from International's hangar May 25, 1952. A. Yes, sir.

Q. All the work on the airplane had been done at that time, as far as International was concerned?

A. Yes, sir.

Q. It had been done since about the beginning of April, is that right? A. Sometime in April.

Mr. Blackman: No further questions. [861]

The Court: Any further questions?

Mr. Nelson: No questions, your Honor.

The Court: You may step down.

(Witness excused.)

The Court: Any further surrebuttal? Both sides rest? All parties rest?

Mr. Abbott: We rest, your Honor.

Mr. Blackman: Yes.

The Court: How much time does the Government wish for argument?

Mr. Abbott: A total of one hour, with opening and closing, if the opposition is given the same period.

Mr. Nelson: One hour will be sufficient for us, your Honor.

Mr. Blackman: That will be sufficient.

The Court: We will begin the arguments at 2:30 this afternoon. I don't propose to preclude the argument, so you gentlemen argue fully.

Are there any members of the jury who might be inconvenienced if we sat to 6:00 or 6:30 this evening?

I have to excuse you at this time because there are some other matters. You will be excused until 2:30 this afternoon. Before we separate I would admonish you again of your duty not to converse or otherwise communicate amongst yourselves or anyone else upon any subject touching the [862] merits of this trial and not to form or express an opinion on the case until after it has been finally submitted to you for your verdict.

You are now excused until 2:30 this afternoon, when you will hear the summation of counsel.

(Whereupon the jury retired from the courtroom.)

The Court: Let the record show the jury have retired from the courtroom.

Do you gentlemen have any suggestions with respect to the proposed interrogatories in the special verdict form?

Mr. Abbott: Would it be appropriate to make a record of excluded evidence with Mr. Bancroft, your Honor?

The Court: We will make that when the list of exhibits come, Mr. Abbott. It would be very appropriate to have it every morning, an up-to-date list of exhibits. If your secretary can't work at night and get it out—I must say, my secretary works at night to get the instructions done on this case. I asked for an up-to-date list of exhibits in the case

at all times, every day, and it should have been furnished.

Mr. Abbott: Your Honor, I have no power to require my secretray, who is a Civil Service employee, to work after 5:00.

I do have the exhibit list here at this time. I am filing the original and one copy of the second supplemental [863] exhibit list, and serving a copy on parties not represented by counsel, and counsel.

The Court: I will hear the offer of proof some other time. I want to take up this special verdict and get that settled, now.

(Thereupon, a discussion was had between court and counsel on the interrogatories submitted on the special verdict.) [864]

Friday, November 5, 1954—12:55 P.M.

The Court: Now, gentlemen, what about this counterclaim? Let's get rid of all the evidence we can in this case today. We don't want to make a career out of it. Is there any reason why we can't go ahead and take any additional evidence now that has to be taken on the counterclaim?

Mr. Abbott: I have Title 28, Section 2406, which provides for a manner in which the claim is to be made to the General Accounting Office——

The Court: I am familiar with the section. What is your point?

Mr. Abbott: Our point is that there is no provision there for a 15-day refusal, or an implied refusal based upon——

The Court: Have you looked at the regulations?

Mr. Abbott: I have not looked at the regulations at any time.

The Court: Well, I will consider that you made evidence of claim. I will consider the claim has been made and rejected.

Mr. George C. Finn: All right.

The Court: Do you have evidence that you made a claim?

Mr. Charles C. Finn: The slip is home, your Honor. [2*]

The Court: Can you have it here this afternoon?

Mr. Charles C. Finn: Yes, your Honor.

The Court: Very well. It is almost 1:00 o'clock. What time would you be ready to proceed this afternoon?

Mr. Charles C. Finn: I could be back in 45 minutes, your Honor.

The Court: Here is my view on that, gentlemen: If you are entitled to the counterclaim, you are entitled to the plane or its value. Now, assuming you are entitled, or assuming you get the plane back, if you are entitled to the value of the plane you are not entitled to anything for the use of the plane. In other words, you can't have the value of the property and the rental of it, too. If you get the value of the plane at the time it was taken from you, with interest, that is all you would be entitled to. Or, if you get the plane back, then you are entitled to the reasonable value of the use of it, the rental value during the period you were deprived of it.

Mr. Charles C. Finn: Yes, sir.

The Court: Now, when you rent something part of the cost of renting is the ordinary wear and tear on it, upon the use of it. So you don't get that plus the rental.

Mr. Charles C. Finn: Yes, sir.

The Court: But you make a claim in your counterclaim that the Government damaged it by extraordinary use or misuse, [3] neglect, by leaving it out exposed to the elements.

Mr. Charles C. Finn: Yes.

The Court: Now, in order to base any finding upon that we would have to find first if it is rust—is rust part of it?

Mr. Charles C. Finn: No, your Honor.

The Court: Let's use rust. You first have to find out how much rust would be due to ordinary wear and tear and how much of it was due to extraordinary neglect.

Mr. Charles C. Finn: I don't think it will be difficult to determine it, your Honor. And I don't—we are not going to ask for anything excessive. We don't believe in bleeding the Government and the people that have to pay for this. We want a fair and equitable judgment. That airplane has been in the wind and sand and dust. The amount of money it would take to get that out of there, the recovering of the airplane——

The Court: Well, if the airplane is returned to you it will be delivered to you. You won't have to go get it. There wouldn't be any question about that.

If a judgment is rendered in your favor on the counterclaim, it would be a judgment that the Government return the plane to you or pay you so much money; and it would be at the option of the Government. If the Government wants to keep the plane, why, they have bought it, in other words, from you.

Mr. Charles C. Finn: Your Honor, is there any possible way that we could relinquish any monetary consideration in [4] lieu of the plane? We want the airplane.

Mr. George C. Finn: Let me put it this way, your Honor: In that respect, if the airplane were returned to us in the condition it was taken from us there wouldn't be any necessity for requiring damages for wear and tear on it being out there in the dust. In other words, the Air Force has facilities for putting that airplane, probably more inexpensive than anyone else for their purposes, back into the condition in which it was taken from us. We don't ask that we get money. All we want is the plane back in the condition in which it was taken.

The Court: Very well. Perhaps if a judgment were rendered to that effect that would take care of your extraordinary wear and tear.

Mr. George C. Finn: Take care of it completely. In that same respect, when anyone leases an airplane, as in this lease we had with International, the conditions were that the plane be returned in the same condition in which it was——

The Court: The same good order and condition in which it was taken from you, ordinary wear and tear excepted.

Mr. Charles C. Finn: Yes, your Honor.

The Court: Because you are claiming rental value, you see, that means the Government would be buying the use of the plane during the period you have been deprived of it.

Mr. Charles C. Finn: Yes, your Honor. [5]

The Court: Whether they used it or not they were entitled to the benefit of ordinary wear and tear.

Mr. George C. Finn: Yes, your Honor.

The Court: I think that takes care of it. If a judgment were rendered in your favor it would be for the value of the plane at the time it was taken, or for a return of the plane in the same order and condition in which it was at the time it was taken from you, less ordinary wear and tear——

Mr. George C. Finn: Yes, sir.

The Court: ——and for the reasonable rental value of it during the period you were deprived of it.

There is no dispute as to the evidence of rental value, is there?

Mr. Abbott: Well, there are two points——

The Court: What is the evidence as to rental value? You told me several times there was a dispute, but I don't recall.

Mr. Abbott: The evidence was that in the condition in which the plane existed at all times, up to the present time, it had no rental value. But were the aircraft licensed for passenger use within the United States, and work necessary for licensing done

in the sum of \$50,000, it would have a rental value of \$5,000 per month.

The Court: Is the evidence that it had no rental value in the condition it now is? [6]

Mr. Abbott: Which it now is and has been at all times from the date of its taking.

The Court: Are you all agreed on that?

Mr. Nelson: We are very much agreed with that, your Honor.

Mr. Blackman: No, your Honor.

The Court: Is that the evidence?

Mr. Nelson: That was my understanding of the evidence, your Honor.

The Court: That is all I am asking. I am not asking whether you agree with the evidence. Is that the evidence?

Mr. Blackman: I believe there is evidence in the present state of the record which shows evidence to the effect counsel has stated it.

The Court: You may wish to call Mr. Batchelor on the rental value.

Mr. Charles C. Finn: I would like to cover one point which is the most important thing to us, after two years of dispute, and that is that we do want the airplane. And the privilege resting in the Government to pay for the plane or return it to us is quite an important issue. I don't know how that pertains to law, but if it is legally possible at all for that airplane to be returned to us that is our choice—if it is returned to us in the same condition in which it was taken. [7]

The Court: I will hear you on it. It may be that

the airplane is sufficiently unique that the court would have the power to order this specific plane to be returned to you.

Mr. George C. Finn: Thank you, your Honor.

Mr. Abbott: On the question of rental value as between the defendants Finn and defendant International, it was adjudicated that International has the right and has had the right to possession of the aircraft at all times from May 26, 1952, to the present time. So that even assuming——

The Court: Has it been finally adjudicated?

Mr. Abbott: There has been no evidence to the contrary in this action, your Honor.

The Court: Has it been finally adjudicated?

Mr. Abbott: The adjudication across the street is on appeal.

The Court: The judgment across the street is no final judgment; and until it is there is no final judgment as far as evidence of adjudication.

Mr. Abbott: Only in this record, at all times from May 25, 1952, to the present time, as between those two parties, International had the right to possession.

The Court: But the defendants Finn contend they had the right to possession. So I will have to take any evidence they may wish to offer as to the reasonable value of the use of the plane during that period if they claim they were entitled [8] to possession and were deprived of possession.

Now, will you be ready to proceed at 2:00 o'clock, or 1:30?

Mr. George C. Finn: Whenever you say, your Honor.

The Court: Well, apparently your brother will have to go somewhere and——

Mr. George C. Finn: He can be back by 1:30.

The Court: Can you be ready at 1:30, gentlemen?

Mr. Abbott: We would like to have it 2:00 o'clock, so we will have a chance to make contact with our witness.

Mr. Blackman: May I ask how long Mr. Batchelor will be used as a witness?

The Court: I shouldn't think it would take very long. We want his opinion as to the value of the use of this plane. As I understand it, the evidence as to the value of the plane has been given. I don't know whether Mr. Batchelor testified to it or not.

Mr. Blackman: I don't recall, your Honor.

The Court: He may be called upon to testify as to the reasonable value of the plane, the fair market value for cash at certain times of the plane—well, at the time specifically when the Government took possession of it.

Secondly, he may be asked to testify as to the fair market rental value of the plane during the period in which the defendants Finn have been deprived of the use of it. [9]

Now, I am not passing upon who is entitled to possession. There will be time enough to do that after the evidence is in. But I thought as long as we are here it seemed foolish not to take what bit of re-

maining evidence there is to be taken. And you wouldn't have to come back again, I trust.

Mr. Blackman: Thank you, your Honor.

Mr. Charles C. Finn: Your Honor, I think that your Honor will find this aircraft sufficiently unique so we wouldn't have to go into the value of the plane.

The Court: Well, you would want to make your record anyhow. If I find it unique the Court of Appeals might not find it unique. There is always that possibility.

Mr. Charles C. Finn: The word "unique" seems to cover the situation thoroughly.

The Court: Are there any available in the market?

Mr. Charles C. Finn: I think they have all been sold.

The Court: You see, unique items in law are items for which there are no duplicates, like an heirloom.

Mr. George C. Finn: This is an heirloom, your Honor.

The Court: Also, pieces of art.

You think it will be if this keeps up for many more years, is that it?

Mr. George C. Finn: Yes, your Honor.

The Court: Well, I hope before your grandchildren get around to it we will have it disposed of. [10]

Mr. Charles C. Finn: The factory has gone out of business, which would tend to make it unique.

The Court: Does the Government have any attitude on this? If the defendants prevail does the

Government intend to tender back the plane or the value?

Mr. Abbott: That is the very question I put to the representative of the Agency, your Honor, and I will try to get a quick answer to it. I don't think we can answer it right now, however.

The Court: Perhaps you can. That might shorten things.

We will reconvene at 2:00 o'clock then, gentlemen.

(Whereupon a recess was taken until 2:00 o'clock p.m. of the same day.) [11]

Friday, November 5, 1954—2:00 P.M.

The Court: Are there ex parte matters?

The Clerk: No, your Honor.

The Court: Case No. 14309, United States vs. George C. Finn and others. Are you ready to proceed on the counterclaim, gentlemen?

Mr. Abbott: The Government is ready.

Mr. George C. Finn: We don't have these exhibits marked yet. And we haven't discussed them with counsel. But we are ready to proceed otherwise.

The Court: Very well.

Has the Government any indication or offer of stipulation as to whether or not it would elect to return the plane—or, that is, to return the plane in the condition it was in at the time it was taken from the possession of the Finns, defendants Finn, ordinary wear and tear excepted; or whether the Government would elect to pay the value of it in

the event the judgment should be finally to that effect?

Mr. Abbott: We don't have that at this time, but we will undertake to prepare a written stipulation or written statement of the Government's intention and file it as soon as possible. Our inability to do so now should not interfere with the taking of evidence.

The Court: Very well. [12]

Mr. Charles C. Finn: One thing your Honor, the matter of establishing the value of the plane, will that be held over?

The Court: I want to hear any evidence you have. There has been evidence offered here. Mr. Dulie testified. You heard him testify at some length about it. There has been some evidence here that defendant International Airports offered \$50,000 or \$55,000 at one time. The allegation of your counterclaim is \$70,000, isn't it?

Mr. Charles C. Finn: Yes, your Honor.

The Court: So, I will hear your evidence on that. I will hear your evidence on the rental value, and the evidence as to any extraordinary or inexcusable wear and tear on the part of the Government since the plane has been in the possession of the Government.

Mr. Charles C. Finn: I think it more proper to start with the value.

The Court: Just as you gentlemen wish.

Mr. George C. Finn: We will start with the lease of the airplane then.

The Court: You wish to call Mr. Batchelor?

Mr. George C. Finn: Yes, your Honor.

The Court: Mr. Batchelor, will you take the stand, please? [13]

GEORGE BATCHELOR

called as a witness by the defendants Finn, having been previously sworn, was recalled and testified further as follows:

Direct Examination

The Clerk: You have been sworn, Mr. Batchelor?

The Witness: Yes, sir, I have been sworn before.

The Clerk: Your name is——

The Witness: George Batchelor.

The Court: You may proceed, Mr. Finn.

Mr. George C. Finn: May I consider Mr. Batchelor qualified, as he was in this other——

The Court: Well, any testimony he has heretofore given is given in the case. Any question about his qualifications to express an opinion as to the value?

Mr. Abbott: No, your Honor.

The Court: As of what dates do you wish to establish value?

Mr. George C. Finn: I am establishing leasing.

The Court: Well, any value as of what date?

Mr. George C. Finn: In August, 1951.

The Court: Any other time? The way to do this is, out of an abundance of precaution, establish it on every date that might be material. Then you don't have the necessity of wishing you had. [14]

Mr. George C. Finn: Yes, your Honor, establish it as of August and establish it as of January.

(Testimony of George Batchelor.)

The Court: We cover the periods covered in the interrogatories the jury is now considering?

Mr. George C. Finn: Yes, sir.

The Court: You wish to speak of rental value, now?

Mr. George C. Finn: Yes.

The Court: Mr. Batchelor, was there a market for rental of these C-46 planes during the period from 1946 up through the time of the commencement of this suit on July 3, 1952, and up to date?

The Witness: Well, until the time of—the approximate time of the Korean War the planes had no rental value.

I would like to know in what condition I am to assume the airplane is in? [15]

The Court: When did you first see this airplane in suit?

The Witness: In the summer of 1950.

The Court: At that time, in the condition it was in then, was there a market rental value of that plane for any purpose?

The Witness: Well, in the condition it was in at the time we saw it, no work on it, I would say no. Now, I say “no.” I mean no substantial rental value.

The Court: Well, when did you next see it after that time in 1950?

The Witness: I saw it two times close together in 1950; and the same would be true for both of those instances.

The Court: When did you next see it?

(Testimony of George Batchelor.)

The Witness: I next saw it in October, 1951.

The Court: Now, at that time when you first saw it in October, 1951, did it have, or was there any market value for the rental of it in the condition in which it was at that time?

Let's get at it this way: Your company did work on it in that month, did it not?

The Witness: Started then, yes, sir.

The Court: All right. At the time you started work on it was it in a condition that it had any market value for rental? [16]

The Witness: Very nominal amount.

The Court: What do you mean by "nominal"?

The Witness: Very small amount, in my opinion.

The Court: You may be talking about thousands and I am thinking of pennies. What is "nominal amount" to you?

The Witness: Well, as an unlicensed airplane it would have no value.

The Court: There was the plane for any use you could put it. Did it have any market value, the use of that plane, for any purpose in the condition in which it was? Did it have any market value—that is the question—for any purpose? And, assuming there were no restrictions upon you, other than those imposed by law; and by that, it cannot fly without a permit, license——

The Witness: Well, I would say assuming for any purpose, there was a rental value.

The Court: Do you have an opinion as to what that rental value was?

(Testimony of George Batchelor.)

The Witness: As an unlicensed airplane? No, sir.

The Court: Well, whatever it was.

The Witness: It was unlicensed at that particular time. You said as it——

The Court: Could someone take it and get a license and use it for something?

The Witness: Yes, sir. [17]

The Court: Now, your company did work on it when?

The Witness: During the latter part of 1951; October, '51, through April, '52.

The Court: When is it first contended that the defendants Finn were deprived of the use of it?

Mr. George C. Finn: Deprived of the use of it on September 18, 1952.

The Court: Are you familiar with the condition of the plane at that time?

The Witness: I am familiar with its condition at the time it left International's hangar.

The Court: When was that?

The Witness: That was in May of '52.

The Court: All right. In the condition in which it was then did it have any market value for rental purposes, the use of it; for any purpose, any lawful purpose?

The Witness: Well, I am a little confused, your Honor. To take—it would have a rental value, to take the airplane such as International was willing to do and to spend money and license it, then it would have a rental——

(Testimony of George Batchelor.)

The Court: Mr. Batchelor, there is the plane setting over there. It is in the condition it was then, whatever that was. I am asking you what it was; whatever it was. And here's a man who owns it. He says he won't sell it but he will rent it to you. He says, "I won't ask you what you are going to [18] use it for. Use it for anything you want to use it just so it isn't contrary to law."

What was it worth to the man who wanted to rent it, no matter for what purpose he wanted to rent it? Perhaps he wanted to rent it and paint it a different color and put something on it and use it for the sideshow; whatever he might want to rent it for.

He might want to rent it and overhaul it and put it in as a plane on a passenger line. He might want to haul freight with it. He might want to dust crops with it. I don't know; whatever it was usable for. What he is buying is the right to use that plane. Did it have a market value for the use of that plane?

The Witness: Yes, sir.

The Court: Do you have an opinion as to that value?

The Witness: Yes, sir.

The Court: What is your opinion?

The Witness: In the winter of 1951, and through and in 1952, it would have been worth—the value would be \$5,000 a month, after it was licensed.

The Court: No. It isn't licensed. It is standing over there. I don't know whether it is licensed or

(Testimony of George Batchelor.)

not. Was it licensed at the time it left your hangar?

The Witness: No, sir.

Mr. George C. Finn: May I point out one example, Mr. [19] Batchelor?

The Court: Just a minute. We want the dates.

Mr. George C. Finn: You know San Diego Sky Freight——

The Court: You aren't permitted to coach your witness. We want the date. What is the date you are inquiring about?

Mr. George C. Finn: I am inquiring as to the date of September 18, 1952.

The Court: Was it in the same condition when it left the hangar?

Mr. George C. Finn: Yes.

The Court: Let's take the condition the witness knows.

Mr. George C. Finn: Except it was flying better.

The Court: What date did it leave the hangar?

Mr. George C. Finn: May 25, 1952.

The Court: Do you agree on that day?

The Witness: That would be approximately correct. I don't know the exact day.

The Court: Do you know the condition it was in?

The Witness: Yes, sir.

The Court: Suppose you had leased it that day. That is what we are talking about. You might have to do a dozen things. You might have to put new tires on. You might have to import a partner from South America. But that is no concern to the man

(Testimony of George Batchelor.)

who is leasing the plane. That doesn't affect the market price. Here is a plane available for rental for whatever [20] you can adapt it for. As I say, you might make a sideshow out of it. I don't know. Whatever it is usable for. That plane, in the condition it was in, did it have a market value?

The Witness: Yes, sir.

The Court: Do you have an opinion as to the value?

The Witness: In that condition and that date I would say \$2,000 to \$3,000 a month.

The Court: You wouldn't make a deal on that basis, you see, because the man would immediately want to know which it is, two or three.

The Witness: We would have leased it for two on that date.

The Court: That isn't the test. The test is what a seller—that is, a lessor or renter, the owner, not being compelled to rent but wishing to rent it in the open market, what he would be willing to rent it for; and what a lessee or a person who wanted to use it, but not being compelled to have it, would be willing, voluntarily, to pay for it at that time: say by the week or by the month, whatever the custom is in the trade.

The Witness: The custom is by the month. Well, I would say \$2,500 a month.

The Court: Would be the fair cash rental value?

The Witness: Rental value, both ways.

The Court: The plane, the condition it was in at the [21] end of May, 1952, until what time? In

(Testimony of George Batchelor.)

other words, when would that rental value change in the future?

The Witness: Well, it would have changed in the winter of 1953.

The Court: It would be \$2,500 a month from the end of May, 1952, through to the winter of 1953?

The Witness: I would think so.

The Court: What would you call the winter of 1953?

The Witness: Well, until the middle of January, 1953.

The Court: January 15, 1953. What would it have been then?

The Witness: Decrease slightly to \$2,000 a month then.

The Court: Until what period?

The Witness: Until about the 1st of May.

The Court: Until May 1, 1953. Then what would it have been?

The Witness: Go up slightly again, I would say, to \$2,500 a month.

The Court: Until what period?

The Witness: Well, in the summer months the values are higher than they are in the winter months, when traveling is slow.

The Court: From May 1st until what?

The Witness: Through—well——

The Court: When are the summer months over in the aviation [22] industry?

The Witness: Well, heavy traffic in the summer falls off around the end of September. But then it

(Testimony of George Batchelor.)

picks up again about the middle of November until after the Christmas holidays.

The Court: All right. You are renting this plane. You are telling us the fair market value. We have it at \$2,500 per month from the end of May, 1952, until mid-January, '53; \$2,000 a month until May 1, 1953; and then up to \$2,500 a month May 1, 1953, until——

The Witness: Well, in 1953, I'd say in September, September 15th, the value would have fallen that way.

The Court: Until when? To what figure?

The Witness: To around \$2,000 a month again, I would say, right through to today.

The Court: That is, today?

The Witness: Now, I am having to assume something here.

The Court: What are you assuming?

The Witness: Well, I am assuming that the leasing party is having to spend its own money and taking that into consideration to license the airplane and place it into service.

The Court: He takes it as his?

The Witness: Yes, sir, I am assuming that. And that he is spending his own money to license the airplane, put it in service, and maintain it.

The Court: Yes. The owner of the plane isn't doing [23] anything except collecting the rent.

The Witness: That is correct.

The Court: You are assuming——

The Witness: Yes, sir.

(Testimony of George Batchelor.)

The Court: ———that the lessee of the plane or the renter takes it as his own and bears all expenses.

The Witness: Yes, sir.

The Court: Now, do you wish to cross-examine on this point?

Mr. George C. Finn: Your Honor, may I ask one more question on this point, on the rental?

The Court: Yes.

Mr. George C. Finn: Would it make any difference if that same airplane were used in Mexico; between, for instance, Baja California and San Diego? Would that make any difference as to the rental value, since there would be no certification required? Would that change the rental value?

The Witness: That would possibly increase it slightly.

The Court: Mr. Batchelor was asked to assume that the renter, the lessee would put it to any use he pleased. And presumably, he would put it to what he thought would be the highest and best use; most advantageous.

The Witness: Yes, sir.

Mr. George C. Finn: That may include whatever he could do in this country, and there are different considerations. [24]

The Court: Mr. Batchelor was assuming, I take it, rather, all practicable uses.

Mr. George C. Finn: I think he may have forgotten the possibility it could have operated uncertificated elsewhere.

(Testimony of George Batchelor.)

What would the increase in value be if it was operated elsewhere?

The Witness: Slightly increased risk involved, so the rental would be increased slightly—I would say approximately \$500 a month during each of the periods that I have mentioned. But you do have a greater risk involved.

The Court: Would you pay for the plane? That is the question. Would the man who is going to take that risk, would he pay that much more for the plane? Would the owner rent it for that purpose?

The Witness: They would have to pay more to fly it into Mexico because most companies in the States are reluctant to allow a plane to operate into Mexico.

The Court: That is because of insurance problems?

The Witness: No, sir, not insurance. It's other problems.

The Court: Operational problems?

The Witness: Yes, sir.

The Court: Well, we are dealing with two people who are bargaining over the rental of this plane, and they are here in Los Angeles, or in Los Angeles County—the scene of these transactions is Los Angeles County and Kern County—they [25] are bargaining over it, and the fair market value for cash of the rental of this plane is what this theoretical owner and this theoretical lessee would arrive at as a fair bargain. That is what you are considering, isn't it?

(Testimony of George Batchelor.)

The Witness: Yes, sir.

The Court: With the right to the lessee to use it for any lawful purpose.

The Witness: That is correct.

The Court: Anything further?

Mr. Charles C. Finn: One question.

Q. (By Mr. Charles C. Finn): Isn't it true, Mr. Batchelor, that a person desiring to lease an airplane of this type, in his willingness to rent the plane, is also willing to put the airplane into shape and is willing to make a lease of a considerable amount of money, realizing he has to first put in an investment of maybe \$45,000 or \$55,000, willing to invest that money and then fly that airplane out, fly his investment out at a certain rate per month and then pay to the lessor the cash value when that bill of rehabilitation has been paid? Is that ever done? A. Yes, sir, that is done.

Q. Is that common practice?

A. Well, it is not the most common, but it is done quite often.

Q. Reasonable to expect—— [26]

A. Reasonable in normal business.

Q. Did you ever do that?

A. We have done the work and worked it out on the basis we were to be paid after the airplane was flying.

Q. Did you make such an agreement with the Finns to do that? Did International make such an agreement to the Finns, to your knowledge?

A. Yes.

(Testimony of George Batchelor.)

Q. And it was, substantially, that International would rehabilitate the airplane, would lease it for a certain amount, would fly the airplane, pay off the investment of International by the use of the plane for a certain number of months and then pay cash to the lessors for the remainder of the time?

Mr. Abbott: The lease instrument which Mr. Finn refers to is in evidence and speaks for itself. That, I believe, is International's Exhibit G.

Mr. George C. Finn: Your Honor, I think this is essentially covered, unless there is some business sense that I don't understand about it here in the way Mr. Batchelor presented it. He said——

The Court: Well, if you think it is covered——

Mr. George C. Finn: What is your question?

Mr. Charles C. Finn: I just want to know how much did you engage—lease this airplane for under those circumstances per month and for what period of time? [27]

The Witness: Mr. Finn, I was asked to assume that this lease was as appeared starting in May, 1952, which was nine months after the period of the prior arrangement with you and your brother.

Mr. Charles C. Finn: Would it be improper to refer my question to that time, at the time of the lease of International?

The Court: The lease is in evidence and I assume it shows the amount.

Mr. George C. Finn: It shows \$5,000.

The Court: Very well. It speaks for itself, doesn't it?

(Testimony of George Batchelor.)

Mr. George C. Finn: Yes.

The Court: When you say "so much per month," did you assume that the lease was on a month-to-month basis, the lease of the plane?

The Witness: The lease would be on a month-to-month basis.

The Court: Anything further on direct examination?

Mr. George C. Finn: And unlimited in flying hours?

The Witness: Yes.

Mr. George C. Finn: Are airplanes ever leased on a basis of flying hours, so much per hour?

The Witness: Yes, sir.

Mr. George C. Finn: What is the normal rental value on [28] an hourly basis?

The Witness: Well, there again——

Mr. Abbott: We object to the form of the question, unless Mr. Finn indicates he is referring to licensed or unlicensed aircraft.

The Court: You would have to limit it to this aircraft and specify the period. And I assume that is covered in the question that Mr. Batchelor has already answered. He has covered a transaction which would permit the highest and/or most advantageous financial use of the plane by the lessee permitted by law.

Mr. George C. Finn: Yes, your Honor. Now, there are two systems in the industry, a flat monthly rate to fly out as long as you want, and then there is another lease where the time is prorated.

(Testimony of George Batchelor.)

The Court: Well, under the questions I put he might not even fly the plane at all. He might locate it on the carnival grounds and use it as a side-show——

Mr. George C. Finn: Well, take this as a basis——

The Court: ——whatever would bring the user the most profit. And he would be the judge of that.

Mr. George C. Finn: Yes, your Honor.

The Court: He would be entitled to use it for any lawful purpose, day or night. That is what you assumed?

The Witness: Yes. [29]

The Court: Are you willing to turn the witness over to cross-examination on this question?

Mr. George C. Finn: Yes, your Honor.

The Court: On this issue.

Cross-Examination

By Mr. Abbott:

Q. When you answered the question of the court in which the court referred to "month-to-month leasing," Mr. Batchelor, did you have in mind an arrangement by which at the end of any particular month the lessor might demand return of the aircraft to him?

A. No. I predicated the values on the assumption that the lease would be for approximately one year.

Q. Then if the leasing period differed from more than one year, so would your values, I take it.

(Testimony of George Batchelor.)

A. Yes, sir.

Q. What was the approximate cost of doing the work necessary to licensing the aircraft in question for commercial use in the United States as of May 25, 1952?

A. On this airplane?

Q. Yes, sir.

A. Well, may I ask you a question? For passenger operations in the United States in May of 1952, is that right?

Q. Well, perhaps I can clear it up this way: The C-46A has never been considered an aircraft suitable for [30] freight use, has it?

A. Well, it is anywhere except in the United States.

Q. And the reason why it is not suitable for freight use in the United States is because there is a limit on the gross pay load?

A. Yes, sir.

Q. And that limit is how much?

A. 45,300 pounds at the present time, against 48,000 on the other models, or the later models.

Q. And that limit is one which makes it commercially unfeasible to use the aircraft for hauling freight?

A. In the United States, yes, sir.

Q. Now, is that limit one which has been imposed upon the use of the aircraft by the C.A.A. for reasons of safety?

A. No.

Mr. Blackman: Just a moment. Your Honor, the question as it now stands calls for a conclusion with respect to the reasons why the C.A.A. may have imposed limitations. I think if the last part of the

(Testimony of George Batchelor.)

question is eliminated there wouldn't be any question.

Mr. Abbott: May I inquire what Mr. Blackman's role is in this proceeding?

Mr. Blackman: This is my client on the stand.

The Court: He is a party to this action; and he will be amicus curiae, if necessary. [31]

Mr. Blackman: Thank you, your Honor.

Q. (By Mr. Abbott): Are you familiar with the tests made by the Civil Aeronautics Administration in fixing specifications for commercial aircraft?

A. I know such tests are conducted.

Q. Are you familiar with them? Have you observed such tests being made?

A. I have observed parts of them being made.

Q. And are tests made with respect to gross payload to ascertain the safe limits which may be imposed for cargo carrying?

A. Well, that's a very difficult question, Mr. Abbott. The gross load—a gross weight take-off, weight of an aircraft, is an over-all safety feature for any form of operation.

Q. Now, how much work, in terms of dollars, was necessary to license the aircraft in question for use as a cargo carrying aircraft within the continental limits of the United States on May 25, 1952?

A. Well, it could have been accomplished for as low as \$24,000, \$25,000; and then, depending upon the amount of radios and other factors, up to a maximum, or up to around \$35,000.

(Testimony of George Batchelor.)

Q. What is the approximate cost of doing the work necessary to licensing the aircraft in question for use [32] within the continental limits of the United States for the carrying of passengers as of May 25, 1952?

A. Well, license day-night instrument for passenger carrying for hire, I'd say \$45,000 total would be a fair figure. Now, that is not in addition to licensing it for freight. That is the total cost starting from zero.

Q. Would those two figures to which you testified in your last two answers vary during the period from May 25, 1952, to the present time?

A. Yes, sir. I think they would increase slightly due to labor and material becoming more expensive.

Q. Calling your attention to September 18, 1952, as of that date would there be a difference in either figure?

A. I don't think any appreciable difference.

Q. Would either figure be different?

A. You mean between May and September of '52?

Q. Yes.

A. I don't think any appreciable difference.

Q. Would either of those figures to which you have testified as to cost of certification vary between September of 1952 and February 1, 1953?

A. Well, if I may answer you this way: There has been a slow, gradual increase in labor, and there has been an increase in the cost of parts up until, I'd say, the summer of this year. In the sum-

(Testimony of George Batchelor.)

mer of this year the cost of [33] C-46 parts has decreased.

The Court: Those are replacement parts?

The Witness: Yes, sir.

Q. (By Mr. Abbott): What is your opinion of the cost of doing the work necessary to certify the aircraft for flight for passenger purposes within the continental United States on February 1, 1953?

A. I'd say—there again, I have to assume you mean day-night instrument; the same condition as before. I would say an increase of a thousand to \$1,500, making \$46,000 to \$46,500.

Q. And what would be the approximate cost of doing the work necessary to certification for freight use within the continental United States as of February 1, 1953?

A. Well, it's easy to just say "freight use," without going into a complete list of specifications. So I have to keep sitting here making assumptions that you are not asking me about. I hope you appreciate that.

Q. Well, assume that the work being done for certification, to the extent there is option in the owner, is the work which a reasonable, prudent aircraft owner would make in order to best enhance the chattel?

A. Well, I'd say \$27,500 would be a fair figure. That's for just freight.

Q. Why is that figure lower than the maximum figure [34] of \$35,000 that you fixed for the same work as of May 25, 1952?

(Testimony of George Batchelor.)

A. Because you have now asked me to assume that I am a prudent aircraft owner and trying to get the work I can done for the least amount of money.

Q. Are you also assuming that the work is being done by competent technical people and at the fair market value for the work so done?

A. Yes, sir. And I stated before it could have been done as low as around \$24,000, I believe.

Q. On what date after February 1, 1953, was there a change of significance in the cost of certification for use within the continental United States?

The Court: I don't know what the purpose of this is, Mr. Abbott, but it isn't helping me. It may help the Court of Appeals, but it doesn't help me.

Mr. Abbott: The purpose is this, your Honor: In order for any person to fly, the lessee or lessor, this work must be done.

The Court: Yes, but you have given me an idea of what it is. I don't care about the details.

Mr. Abbott: Perhaps one question will clear it up.

Q. (By Mr. Abbott): Was there any significant change in the cost of doing the work of certification necessary to certification from February 1, 1953, to the present time? [35]

A. Well, if I——

The Court: Any substantial—anything that would affect the rental value or the market value, I take it. Is that what you mean, Mr. Abbott?

(Testimony of George Batchelor.)

Mr. Abbott: It is, your Honor.

The Witness: Well, now, you are asking me the cost of licensing, is that correct, certification of the aircraft; not the rental value?

The Court: Doing the work necessary, essential to certification. Is that it?

Mr. Abbott: That is it, your Honor.

The Witness: Not anything appreciable; no big increase.

Q. (By Mr. Abbott): Have you ever known of a leasing of an unlicensed aircraft, an aircraft which could not be licensed without a minimum expenditure of \$24,000? A. Yes, sir.

Mr. George C. Finn: I object. This doesn't have anything to do with reasonable rental value.

The Court: He is testing the witness' experience. Overruled.

Your answer is yes?

The Witness: Yes, sir.

Q. (By Mr. Abbott): What is the incident to which you refer, or the transaction to which you refer?

A. There is a company in San Diego flying [36] into Mexico, Lower, California, flying freight, that are flying unlicensed aircraft; and they have leased them.

Q. Was the aircraft in question in condition satisfactory for the flying of freight between Mexico and San Diego, California, on May 25, 1952?

A. That I don't know.

Q. Isn't it a fact, sir, that a substantial part of

(Testimony of George Batchelor.)

the work that was then necessary to certification of the aircraft would also have been necessary if the aircraft were to be used at any place in the world for commercial purposes? A. No.

Q. Did the aircraft have all of its instruments on May 25, 1952?

A. Well, instruments are one of the smaller cost items in an airplane, anyway. They are not a substantial item.

Q. Did it have all the instruments on that date?

A. The aircraft in suit?

Q. Yes, sir.

A. May 25th. Well, I can't answer that. I don't know.

Q. Were you familiar with the condition of the aircraft on May 25, 1952?

A. Well, yes, sir; I was familiar with the aircraft.

Q. Were you familiar with its condition on [37] that date?

Mr. George C. Finn: I object.

The Court: Let's don't go into all this, Mr. Abbott. You ask him if he went out and counted all the instruments. He says he didn't. He can still be familiar with the condition of the airplane and still not know whether it had every possible instrument at that time. I am interested in saving time. That is all.

Mr. Abbott: I am not splitting hairs, your Honor——

The Court: Well, if you think it is worth it.

(Testimony of George Batchelor.)

Q. (By Mr. Abbott): Did it have substantially all of its instruments on that date, May 25, 1952, Mr. Batchelor? A. Well, I can't—

The Court: Just answer the best you can. You don't know or you do.

The Witness: I don't remember.

Q. (By Mr. Abbott): Did it have any seats for passenger use? A. No, sir.

Q. Did it have the lavatories necessary for passenger use? A. No, sir.

Q. Did it have the stewardess' or steward's compartment necessary—

The Court: You asked him what it would cost to put it [38] in condition, haven't you?

Mr. Abbott: Your Honor, the contention is made that this aircraft may have been useful in its condition outside the United States.

The Court: I am not interested in that. You have been asking what it would cost to put it in condition, haven't you?

Mr. Abbott: To fly within the continental United States, your Honor.

The Court: Fly any way.

Mr. Abbott: If that is the gist of the testimony I will rest. As I understood the questions and answers that work was necessary to flying it within the United States. The point we would make is a substantial part of it is necessary to fly any way.

The Court: Why not ask him what it would cost to put it in—I don't want an itemization.

Q. (By Mr. Abbott): What would it cost, Mr.

(Testimony of George Batchelor.)

Batchelor, on September 18, 1952, to put the aircraft in question in condition to be used outside the continental United States for passenger use?

Mr. George C. Finn: Your Honor, that is assuming that it——

The Court: Please don't interrupt unless you have something important. Let's get on with this. I am trying [39] to help you try your case.

The Witness: Well, there again, without a definite list of specifications, Mr. Abbott, I can't give you—if you will tell me——

Q. (By Mr. Abbott): Assume whatever work a prudent aircraft operator would do in order to fit the aircraft for the purpose described.

A. Well, with bucket seats——

The Court: Don't itemize it. You say what you think it would be.

The Witness: I'd say \$12,000 would have put it into service as a passenger-carrying aircraft outside the United States.

Q. (By Mr. Abbott): And that would be with minimum facilities of comfort for the passengers?

A. Yes, sir.

Q. What would be the cost of fitting the aircraft for commercial use, freight hauls, outside the continental United States after September 18, 1952?

A. Approximately \$8,000 or \$9,000.

Q. Would either of the last two figures to which you testified change materially from September 18, 1952, to the present time?

(Testimony of George Batchelor.)

A. As I have already said, the cost of all labor went up to the present time, and parts went up until the [40] spring of this year.

Q. On approximately a straight line basis? Do you know what I mean by that?

A. Be a slow, gradual increase.

Q. What has been the approximate percentage increase in that period?

A. Well, without calling a bookkeeper and asking exactly what it was, I'd say an average of maybe 10 to 15 cents per man-hour cost.

The Court: How much would it affect these figures that you have been giving us?

The Witness: Not over a maximum of 10 per cent.

The Court: Would it be approximately 10 per cent?

The Witness: Well, without—I am just guessing on it. I know the cost has been going up.

The Court: Then it would be approximately 10 per cent, Mr. Batchelor?

The Witness: I'll say five to 10 per cent.

Q. (By Mr. Abbott): Seven and a half per cent would be the approximate figure?

The Court: He said approximately five to 10 per cent. Isn't that sufficient?

Q. (By Mr. Abbott): Mr. Batchelor, have you ever known of the rental of an unlicensed C-46A for use within the continental United States? [41]

The Court: If you don't remember, just say so.

The Witness: I have heard of one.

(Testimony of George Batchelor.)

The Court: You don't know about it yourself?

The Witness: I don't know any of the details.

Mr. Abbott: Nothing further.

The Court: You have given us the closest approximation you can to these percentages and these figures?

The Witness: Yes, I have.

Mr. Abbott: No further questions, your Honor.

The Court: Anything further of Mr. Batchelor?

Now, Mr. Finn, if you want to include anything that you think is omitted now is your chance.

Mr. Charles C. Finn: We are through with the witness, your Honor.

The Court: What about his opinion as to value? Do you wish to ask his opinion as to market value? We have only covered rental value.

Mr. Charles C. Finn: I want to present to the court what we have, and I will just give what we are going to do. I want to submit the document in evidence with short explanation——

The Court: Let's finish with this witness, first. Do you want his opinion as to value? We want to make the best use we can of Mr. Batchelor while we have him here.

Mr. George C. Finn: I have affidavits, and I will ask—— [42]

The Court: What dates do you wish, the same dates that are included in the interrogatories, as to fair market value?

Mr. George C. Finn: As to fair market value, September 18th on.

(Testimony of George Batchelor.)

The Court: Mr. Batchelor, I ask you to assume—September 18th of what year?

Mr. George C. Finn: 1952.

The Court: Are you familiar with the condition of this plane on September 15, 1952?

The Witness: Yes. Well, as of the time it left our hangar.

The Court: At the end of May, 1952?

The Witness: Yes, sir.

The Court: I shall ask you to assume it was in the same condition on September 15, 1952. Did it have a fair market value in that condition at that time for cash?

The Witness: Yes, sir. Well, still assuming no restrictions.

The Court: Assuming that it could be used. I should have included that. We are really not being very fair with you in putting these questions.

Assuming that it is free of any restrictions as to sale or use, except those imposed by law.

The Witness: Yes, sir.

The Court: And what is your opinion as to what was the [43] fair market value on September 15, 1952, so assuming?

The Witness: I would say \$30,000, approximately; including the work we had done on the airplane.

The Court: We aren't interested in who did the work. Here is a buyer. This is a hypothetical buyer and he walks up, and he has never seen the plane before. He wants to buy it. He doesn't have to buy

(Testimony of George Batchelor.)

it. He wants to buy, but isn't forced to buy. And here is the hypothetical seller who owns the plane, free of all restrictions, ready to sell it on the open market for the highest and best price he can get. And they get together and they bargain and arrive at the fair cash market value. What is that figure, in your opinion? They don't know anything about all this lawsuit; no such thing; don't know anything about International or don't know anything about International repairing it.

The Witness: Sometimes it is difficult to put that out of my mind.

The Court: I understand. But you are qualifying as an expert here and we are asking you to assume this hypothetical seller and this hypothetical buyer. And they meet in this hypothetical market place here in Los Angeles—in Kern County. What figure would they arrive at as the fair cash market value of the plane; the buyer trying to buy it as cheaply as he could and the seller trying to get as much as he could? [44]

The Witness: I'd say \$30,000 to \$35,000.

The Court: He wouldn't sell it at that, because——

The Witness: The exact figure of \$33,000, I think, would be fair, in my opinion.

The Court: That would be your opinion, \$33,000. What other dates do we want to cover? On up to date?

Mr. George C. Finn: On up to date, your Honor.

(Testimony of George Batchelor.)

The Court: In your opinion would that figure change from September 15, 1952, up to date?

The Witness: It wouldn't have changed up to the early part of this year. And the early part of this year it would start to decrease.

The Court: It would be the same \$33,000 to what part of this year?

The Witness: January, February of this year.

The Court: Which was it?

The Witness: Well——

The Court: You will have to be a little bit arbitrary there.

The Witness: I'll say January 15th.

The Court: January 15, 1954. What would the value then be? Go down to so much.

The Witness: Well, we are still assuming the airplane is in the same condition?

The Court: Still assuming the same condition—9-15-52. [45] So I will have it clear, what is the significance of the date here, September 15, 1952? What happened on that day?

Mr. George C. Finn: That is the day the Government allegedly seized the airplane. Up until that time we have no complaint with the Government.

The Court: Very well. You are assuming that on September 15, 1952—you have assumed it was in the same condition as when it left your place of business at the end of May, 1952?

The Witness: Yes, sir.

The Court: All right. Now, you assume that same condition.

(Testimony of George Batchelor.)

The Witness: All right.

The Court: We want the market value, any changes, from September 15, 1952, when you said it was \$33,000, up to the present time.

The Witness: Well, in January of this year I would estimate the value to be \$28,000.

The Court: That is January 15, 1954?

The Witness: Yes, sir.

The Court: It went down to \$28,000. Has it changed since then?

The Witness: Right today I would estimate it as \$22,000.

The Court: Today at \$22,000. Would that be a gradual [46] decline, or——

The Witness: Yes, sir.

The Court: Anything further on direct examination?

Mr. George C. Finn: No, your Honor.

The Court: Cross-examination?

Cross-Examination

By Mr. Abbott:

Q. What condition of the aircraft are you assuming to exist today, Mr. Batchelor?

A. Well, the work that was performed by International.

The Court: He has been asked to assume it is in the same condition it was when it left International's shop at the end of May, 1952.

The Witness: Then I will have to correct that,

(Testimony of George Batchelor.)

because I am still figuring some deterioration on the airplane. The values would be slightly higher if it was in the same condition now as it was at the time it was taken out——

The Court: You have given us \$33,000 for the time it was taken out of your hangar, is that correct?

The Witness: Yes, sir.

The Court: And you have given that to us as September 15, 1952. You have given us \$28,000 as of January 15, 1954; and today \$22,000.

The Witness: I would say \$30,000.

The Court: January 15th, 1954, \$30,000. And what today? [47]

The Witness: Assuming it is in the same condition as it was then, \$25,000.

The Court: Very well. You may cross-examine.

Q. (By Mr. Abbott): Are you familiar with other recent purchases or sales of C-46As, Mr. Batchelor? A. Yes, sir.

Q. And are you familiar with offers to sell and offers to purchase C-46As within recent months?

A. Yes.

Q. Are you familiar with a group of unlicensed C-46As now owned by Civil Air Transport Company, Inc., which are presently hangared in Glendale, California, and which have been placed on the market?

A. I know the airplanes, and I have looked at them.

Q. Are those licensed or unlicensed aircraft?

(Testimony of George Batchelor.)

A. They are unlicensed.

Q. Do you know what the offering price is?

A. Not as of today I don't.

Q. Do you know it as of some other date?

A. I heard recently they were offering them at \$25,000.

Q. Wasn't that figure of \$25,000 a figure on certain unassembled C-46s in the group, Mr. Batchelor?

A. Well, they had the wings off. They are setting on their landing gear. [48]

Q. Aren't there also in the same group of aircraft in the possession of the Civil Air Transport, Inc., at Glendale some completely assembled C-46As which are not licensed?

A. Well, I tried to call the man last week that is handling that——

The Court: Just say if you know.

The Witness: No, I don't.

Q. (By Mr. Abbott): You don't know whether there were any complete aircraft on the field and in that group?

A. Yes, sir. The ones I looked at had the wings off of them. I saw them last Sunday.

Q. What addition to fair market value would result from the complete assembly of the aircraft which you saw at Glendale, owned by Civil Air Transport, Inc.?

The Court: Let's don't go into those. We have enough trouble finding the aircraft in suit. You are just giving those for example——

(Testimony of George Batchelor.)

Mr. Abbott: I only wanted to establish comparability.

The Court: Establish comparability. Ask him to establish comparability with the plane in suit, not with something else.

Q. (By Mr. Abbott): Can you compare the aircraft which you saw at Glendale, California, owned by Civil Air Transport, Inc., with the aircraft in suit in the condition [49] in which you last observed it to be? A. Well, that's difficult to do.

The Court: Then you can't?

The Witness: No, sir.

Q. (By Mr. Abbott): Are you familiar with a C-46A airplane recently sold in a partially dismantled condition at San Luis Obispo to Harry McCandlay and Ben Wedfield? A. Yes, sir.

Q. And are you familiar with an offer to purchase said airplane in assembled condition by one Jim Welsh?

A. Well, I doubt very much if Jim Welsh offered to purchase the airplane.

The Court: Then you are not familiar?

The Witness: No, sir.

Mr. Abbott: No further questions, your Honor.

The Court: Anything further?

Mr. Charles C. Finn: Nothing further, your Honor.

The Court: Do you wish to offer any testimony on this excessive depreciation which you say occurred?

Mr. Charles C. Finn: I think that we had agreed

(Testimony of George Batchelor.)

that the airplane would be returned in the same condition in which it was taken. That would have eliminated any discussion.

The Court: If the Government elects to return the plane, will the Government return the plane in the same good [50] order and condition it received it, ordinary wear and tear excepted?

Mr. Abbott: At the point where the Government took possession, yes, sir.

The Court: If it's returned to the defendants Finn it will be returned to them. If it is returned to the Vineland School District it will be returned there. If it is returned to the International Airports it will be returned there. If the Government is ordered either to return or deliver the plane or its value to one or more of the defendants, I take it that the delivery will be wherever the judgment orders. It will be an election; if the Government has that election. Of course, the defendants Finn are asking that the Government be decreed not to have the election because of the uniqueness of the plane, but be decreed the specific return of the precise aircraft.

Mr. Abbott: Well, I don't mean to quibble on this question of point of return, but it makes a difference for this reason: The point where the Government last retook possession was in Nevada, a short distance from Nellis Air Force, where it is being stored; a flight over a level desert area.

Mr. Charles C. Finn: We will accept that, your Honor.

(Testimony of George Batchelor.)

Mr. Abbott: Whereas to return the aircraft to this vicinity would be to put it in a better condition than it [51] was at the time the Government took possession at Scotty's airstrip. At that time it was not able to fly the mountains.

Mr. George C. Finn: I testify it did fly the mountains.

The Court: Please don't—

Mr. Charles C. Finn: We will stipulate to Scotty's air base.

Mr. George C. Finn: If they give it back to us we don't care where they put it.

Mr. Charles C. Finn: It must be in the same condition which they got it.

The Court: Will the Government return the plane, if required, to Scotty's airstrip in the State of Nevada? Is that a well-defined airstrip?

Mr. George C. Finn: It is a little—

The Court: Is it a well-known place?

Mr. George C. Finn: An abandoned air field.

The Court: Identifiable on the maps?

Mr. George C. Finn: Yes, sir.

Mr. Charles C. Finn: The south leg of the Tona-pah range, about 17 miles below Scotty's castle.

The Court: Will the Government there return the plane if it is ordered to return it, or pay its value in the same order and condition in which the Government received it, ordinary wear and tear excepted?

Mr. Abbott: It will, your Honor. [52]

The Court: Then do you have any occasion to

(Testimony of George Batchelor.)

put on any evidence in view of that agreement by the Government?

Mr. Charles C. Finn: No, your Honor. We think the Government——

The Court: As to any extraordinary wear and tear?

Mr. Charles C. Finn: I don't think there is any extraordinary wear and tear to the extent it can't be adjusted right there at the base.

Mr. George C. Finn: I would like to say this: We happen to be reserves, and if it is all right with the Government we will go down and watch them do it.

The Court: Very well. Is there anything further?

Mr. Blackman: I would like to ask one question.

The Court: Very well.

Q. (By Mr. Blackman): Mr. Batchelor, assuming that the parts necessary for relicensing this airplane were available and that the airplane were in a spot where it could be relicensed, for example, hangar No. 2, Lockheed Aircraft, and assuming the licensing required was the best type of relicensing that you have discussed in your testimony—you have considered in your questioning by Mr. Abbott—do you have an opinion as to approximately how long it would take to relicense the airplane?

A. For passengers?

Q. For passengers. [53] A. 90 days.

Mr. Blackman: That is all.

The Court: Anything further, Mr. Abbott?

(Testimony of George Batchelor.)

Mr. Abbott: Nothing further, your Honor.

The Court: You may step down, Mr. Batchelor.

(Witness excused.)

The Court: Any further evidence by the defendants Finn on the counterclaim?

Mr. George C. Finn: Is there anything that we present for the uniqueness of this aircraft?

The Court: Well, you might if you feel so advised. From the evidence I have heard it is apparently not so unique. There seem to be several of them offered for sale.

Mr. George C. Finn: There aren't any like this.

The Court: How do you mean "like this"; none better or none worse?

Mr. George C. Finn: There may be some better and some worse. But there aren't any that will satisfy our requirement in respect to this particular airplane. We have put something in this plane that you don't get in a shop, and——

The Court: You mean that you couldn't put in another plane?

Mr. Charles C. Finn: Heart.

Mr. George C. Finn: That's right; sentimental value, symbolic value, purpose value. [54]

Mr. Charles C. Finn: All our future is tied up in it.

The Court: If someone came and put a market price in your hand, you could buy another plane.

Mr. Charles C. Finn: We wouldn't accept it. There is no value in money.

The Court: I wouldn't want you to go that far; even in open court.

Mr. George C. Finn: We haven't accepted it before.

The Court: If someone came and put the purchase price in your hand and you could buy one today, I don't suppose you would turn it down.

Mr. Charles C. Finn: Your Honor, we have turned it down. We have been offered, and knew the cash was available, \$34,000 profit, clear, bankable profit, and we turned that down—and we saw the money.

The Court: So you consider it unique because it has sentimental value?

Mr. George C. Finn: Yes, your Honor.

The Court: Will it be stipulated that counter-claimants Finn will be deemed to have been called, sworn and so testified as they have last stated?

Mr. Abbott: So stipulate, your Honor.

The Court: So it will be deemed that they have given that testimony upon their counterclaim?

Mr. Abbott: Yes, your Honor. [55]

The Court: Anything further?

Mr. Charles C. Finn: Is it possible to submit any statement of fact to the court at a later date that may help the court determining such a thing?

The Court: We have taken the facts now. You can argue the law later, but not the facts. You have just stated the facts as I understand you contend them to be, and the Government stipulated that you be deemed to have taken the stand and testified.

Mr. George C. Finn: I will state further that

this isn't just an ordinary airplane to us. We happen to be pilots and we consider this airplane as a captain would his ship. This is ours.

The Court: You are sentimentally attached to it.

Mr. George C. Finn: There are all kinds of reasons. I don't have to enumerate them, I am sure. If you want me to enumerate, I will.

The Court: Not the least of them, it has been through this lawsuit with you.

Mr. George C. Finn: The least of it is the lawsuit.

The Court: Does the stipulation previously made extend to these statements last made? They may be deemed part of the testimony of the counterclaimants Finn on their counterclaim?

Mr. Abbott: We so stipulate. [56]

The Court: Is that enough?

Mr. George C. Finn: The least of it is the lawsuit. I mean, we have taken this plane off a 1,200-foot strip. We have——

The Court: Your experiences with the plane have attached you to it sentimentally.

Mr. Charles C. Finn: It has a value far beyond any airplane like it, or even a better airplane.

The Court: The same as if it were a family treasure or an heirloom?

Mr. George C. Finn: It is both.

The Court: Very well. Have we finished this phase of it now?

Does the Government include the last statements within the stipulation of what the counterclaimants Finn will be deemed to have testified?

Mr. Abbott: Will the court indulge me to the extent of having the statement read?

The Court: It adds up to the fact that the counterclaimants contend because of their past associations with it and experiences with it, they have become sentimentally attached to it, the same as if it were a family treasure or an heirloom.

Mr. Abbott: We will stipulate they will so testify.

The Court: And it will be deemed they have so testified? [57]

Mr. Abbott: And be deemed they have so testified.

The Court: Very well. Anything further?

Mr. Charles C. Finn: As to the rental, we just wanted to submit to the court—the documents speak for themselves—that at the time of the alleged seizure in September of 1952 there were negotiations being made with the company in Seattle, leasing of the aircraft in substantially the same form as the lease with International, and that was interfered with by the seizure of the plane; and that the Civil Aeronautics Administration had passed wires back and forth. And there are wires and the lease, which we would like to submit to the court.

The Court: You are entitled, as alleged owners, to testify as to your opinion as to rental value and market value for sale of this plane, if you wish to testify; in view of Mr. Batchelor's testimony you may do so. I will tell you frankly that when experts are called on a subject I don't give much

weight to the testimony of owners. But you are entitled to testify if you wish to take the stand now and testify your opinion, as owners, of the fair market value for sale and for rent.

Mr. Charles C. Finn: We don't wish to testify to that, except we wish to submit that to us the airplane is invaluable.

Mr. George C. Finn: May we submit other evidence— [58] that is, affidavits to the value of the airplane, just into the files, the records?

The Court: If the Government doesn't object, you may. Have you shown this to Mr. Abbott?

Mr. Charles C. Finn: No.

The Court: We will take a recess, and I suggest you show them to Mr. Abbott and see what the situation is.

We will recess for five minutes.

(Short recess taken.)

The Court: What else do you have to offer on behalf of the counterclaim?

Mr. Charles C. Finn: Your Honor, I wanted to make a stipulation to put this in evidence, the lease of the aircraft in September, 1952, of this aircraft in dispute. And there is an agreement that goes with that which has already been submitted in evidence which pertains to the rehabilitation of the plane. It was marked for identification. I am sorry.

I wanted to submit these to the court to demonstrate the rental value in September, 1952, which is the time at which the Government allegedly seized the plane.

The Court: Hand them to the clerk and the clerk will present them to the court.

(Whereupon the documents were handed to the clerk.)

Mr. Abbott: We object to the offer of the document. [59] The document has not been executed. Mr. Finn advises me it was never executed. We object on the further ground, even if it were executed, that particular transaction relating to the subject aircraft in suit would not be material.

The Court: It is just an offer. Offers are not transactions.

Mr. Charles C. Finn: Yes, your Honor.

The Court: The objection is sustained.

Do you wish it marked for identification?

Mr. Charles C. Finn: Yes.

The Court: It will be marked as counterclaimants Finn Exhibit 1 for identification.

(The document referred to was marked Counterclaimants Finn Exhibit 1 for identification.)

The Court: Anything further?

Mr. George C. Finn: May we submit the insurance on the airplane was the value——

The Court: It wouldn't help me.

Anything further?

Mr. Charles C. Finn: We rest, your Honor.

The Court: Counterclaimants rest.

Mr. Abbott: Mr. Duly, take the stand, [60] please.

DOUGLAS DULY

called as a witness by the plaintiff, having been previously sworn, was recalled and testified further as follows:

The Clerk: You have heretofore been sworn, Mr. Duly?

The Witness: Yes, sir.

Direct Examination

By Mr. Abbott:

Q. Mr. Duly, do you have an opinion as to the fair market value of the aircraft in suit for cash in the condition which it in fact was on the 18th day of September, 1952?

The Court: The 18th day? I have the 15th day.

Mr. Abbott: That date was used. I think the precise date was September 18th. If it will improve the record, I will use the 15th.

The Court: Is it stipulated that the values given for any date in September, 1952, may be deemed the same?

Mr. Abbott: We so stipulate.

Mr. George C. Finn: We so stipulate.

The Court: Very well.

The Witness: The value this date would be \$30,000.

Q. (By Mr. Abbott): Do you have an opinion as to the fair market value of the aircraft in suit as of February 1, 1953, assuming the sale for cash in the condition in which the aircraft in fact was on that date? [61]

(Testimony of Douglas Duly.)

The Court: What is the significance of that date, may I ask?

Mr. Abbott: There has been some statement in the record, your Honor, to the effect that the Government did not have possession of the aircraft until February 1, 1953, rather than September 18, 1952.

The Court: The counterclaimants have asserted the Government took possession September 15, 1952.

Mr. George C. Finn: Yes, sir. We have no complaint from that time backwards. We have no claim from that time backwards against the Government.

Mr. Charles C. Finn: Is that the 15th or 18th now?

The Court: Well, 15th or 18th, which is it?

Mr. Charles C. Finn: It was the 18th.

The Court: May I interrupt, gentlemen, if there is no objection, and ask Mr. Batchelor if his opinions expressed as of the 15th of September, 1952, would apply to the 18th as well?

Mr. Batchelor: Yes.

The Court: Very well. Thank you. Now you may answer, Mr. Duly.

The Witness: February of 1953, \$33,000.

Q. (By Mr. Abbott): Do you have an opinion as to the fair market value of the aircraft in suit as of the present date for cash consideration and in the condition in which in [62] fact it is?

A. Yes, sir. \$35,000.

Q. What was the date of your last inspection of the aircraft in suit, Mr. Duly?

A. October 22, 1954.

(Testimony of Douglas Duly.)

Q. Have there been any changes in market conditions with respect to C-46A aircraft between September, 1952, and the present date?

A. An airplane in an unlicensed condition?

Q. Market conditions for the type of aircraft which this aircraft in suit in fact was?

A. The market is fairly stable for that type of airplane, unlicensed-type airplane.

Q. Has the market increased or decreased at all during the period last described in my last question?

A. It decreased the first of this year; and the last six months there is a gradual increase.

Q. Do you have an opinion as to the rental value of the aircraft in suit from September 18, 1952, to the present time?

A. In its present condition?

Q. In the condition in which it was, in fact was during that period, and for cash?

A. The airplane was not fit for flight use. It had rental use for possibly a movie prop, which would be very [63] meager—\$50 a month.

Q. Did it have any rental value whatsoever as a flyable aircraft during the described period?

A. No, sir.

Q. And are you assuming in answering that question the condition in which the aircraft in fact was during that period?

A. Yes, I am.

Mr. Abbott: No further questions.

The Court: Do you wish to offer anything on rental value?

(Testimony of Douglas Duly.)

Mr. Abbott: On rental value, your Honor? That is the point covered by the witness' testimony just concluded, that it could be used as a movie prop and had a rental value of \$50 a month; and no rental value in the industry as a flying aircraft. It has been previously testified, as to rental value, assuming it is a licensed aircraft——

The Court: What was that?

Mr. Abbott: \$5,000.

The Witness: I don't believe you asked me the rental value before, but I would substantiate that now. If the airplane was a licensed airplane?

Q. (By Mr. Abbott): Yes.

A. During that period \$5,000 was common rental.

Q. And are you referring to licensing for passenger [64] use or for cargo use?

A. Passenger use.

Q. The aircraft in suit when licensed for cargo hauling, only? A. No.

Q. What, in your opinion, would be the cost of licensing the aircraft for commercial passenger use within the continental United States during the period from September 17, 1952, to the present date, starting with the aircraft in the condition which it in fact was during that period?

A. For average passenger configuration, between \$40,000 and \$45,000.

Q. And what is your opinion as to the cost of licensing the aircraft in suit for use as a cargo-hauling aircraft within the continental United

(Testimony of Douglas Duly.)

States, assuming the condition in which the aircraft in fact was during the period from September 18, 1952, to the present day? A. \$23,500.

Q. What in your opinion is the reasonable cost of making the aircraft in suit suitable for passenger service outside of the continental United States, assuming the condition in which it in fact was during the period September 18, 1952, to the present date?

A. Bare minimum passenger use? Ordinarily that can be—stateside is de luxe interiors; outside the country [65] it can be lower than that.

Q. Just give us both figures, if you will, the de luxe interior and the minimum interior.

A. For use outside of the United States, interior for about \$18,000 plus \$10,000 preparation for the airplane, making a total of \$28,000 for de luxe interior.

Q. And minimum-type of interior for passenger use? A. Deduct \$6,000.

Q. Or \$22,000? A. \$22,000.

Q. Is the aircraft in suit one which can be feasibly used for cargo haul outside the continental United States? A. Yes.

Q. What is the cost of making the aircraft suitable for that purpose, assuming the condition in which it in fact was during the period from September 18, 1952, to the present date?

A. Approximately \$11,000.

Q. Did the aircraft have a fair rental value in the condition in which it in fact was during the

(Testimony of Douglas Duly.)

described period, if used outside the United States?

A. I have no knowledge of costs outside the United States for cargo use.

Q. You mean you have no knowledge of rental values outside the United States? [66]

A. Yes.

Mr. Abbott: No further questions.

The Court: Did you hear Mr. Batchelor's testimony, the opinions he expressed?

The Witness: Yes, I did.

The Court: Mr. Duly, may I ask you to assume—first, I would like to ask you, are you familiar with the condition in which this plane, in fact, this airplane in suit was in the month of September, 1952?

The Witness: Yes, your Honor.

The Court: I will ask you to assume it to be continually in that condition in which you knew it in fact to be from the month of September, 1952, to today; and I will ask you to assume it was owned by a person who wished to rent it but did not wish to sell it, but wished to rent it on a month-to-month basis, but was not compelled to. I wish you to assume a person who wished to lease it from him on a month-to-month basis but was not compelled to.

Do you have an opinion as to what would have been the fair market value for cash for the rental of that plane in the condition in which it was in the month of September, 1952, to be put to any lawful purpose for which the lessee wished to put it, assuming he'd put it, of course, to the purpose which

(Testimony of Douglas Duly.)

he thought would be the highest and best, most financially profitable use? [67]

The Witness: It would not be leased to anybody in its condition in those dates. The license must——

The Court: As I told——

The Witness: It cannot be leased.

The Court: As I told Mr. Batchelor, he might take it and make it into a menagerie; he might take it and make a freight hauler or air express out of it. I don't know what he would do with it. He is a man who wants to rent it, rent that plane on a month-to-month basis in the condition in which it was. And here is the owner who wants to rent it to him. They bargain upon a price and arrive at the fair market value for the use of that plane on a month-to-month basis. Do you have an opinion of the fair cash market value for rental purposes on a month-to-month basis in September, 1952, which would be arrived at by this hypothetical owner and this hypothetical renter, or lessee?

The Witness: The hypothetical lessee would not rent an airplane under that condition.

The Court: I ask you to assume that he would.

The Witness: I have no knowledge.

The Court: You have no opinion?

The Witness: No.

The Court: Very well. Anything further of Mr. Duly?

Mr. Charles C. Finn: Nothing further.

The Court: You may step down. [68]

Mr. Abbott: May I ask a question or two to

(Testimony of Douglas Duly.)

develop the matters covered by the court's last questions?

The Court: Yes. I thought you were finished.

Q. (By Mr. Abbott): What was the highest and best use of the aircraft in question in the condition in which it in fact existed from September 18, 1952, to the present date, Mr. Duly?

Do you understand what I mean by "highest and best use"? A. In its present—

Q. As it actually existed then?

A. It would not—it could be leased for non-flyable purposes, for ground use, for \$50 a month.

Q. Is that the highest and best use of that aircraft during the period described in my question as it in fact existed in that period?

A. To my knowledge, yes.

Mr. Abbott: No further questions.

Mr. George C. Finn: Your Honor, one question, please.

Mr. Duly, could the aircraft have been used for experimental purposes on any special licensing arrangement?

The Witness: It being a C-46A, no.

The Court: Anything further of Mr. Duly?

You may step down, Mr. Duly. You are excused.

(Witness excused.)

The Court: Any further evidence by the counter-defendant [69] United States of America?

Mr. Abbott: Nothing further, your Honor.

The Court: Any rebuttal?

Mr. Charles C. Finn: Nothing further, your Honor.

The Court: Both sides rest?

Mr. Abbott: We do, your Honor.

The Court: Very well.

Mr. Abbott: We have a motion we would address to the court in connection with the testimony just concluded.

The Court: Mr. Duly's testimony?

Mr. Abbott: All testimony relating to the counterclaim, your Honor.

We move that all of the evidence taken today in connection with the counterclaim be made a part of the record in the principal case and be a part of that record for all purposes.

The Court: I would assume it would be without the motion.

Mr. Nelson: We object strenuously to the inclusion of this testimony into the record. It has nothing to do with the principal case or the Government's case against the School District.

The Court: It wouldn't be considered except on the counterclaim.

Mr. Nelson: For those purposes we will accept the testimony. [70]

The Court: And I deem it as part of the record without the motion. I deem the motion unnecessary. I take it Mr. Abbott makes it out of an abundance of precaution.

Mr. Abbott: There is this purpose, your Honor: That the Government contended in the course of the principal trial that the aircraft had no reasonable

rental value, only negligible rental value at that time, at the time when the Government——

The Court: As far as putting it in in support of the complaint, the evidence in that matter is closed and now in the hands of the jury.

Mr. Abbott: But no issue of rental value was submitted to the jury, your Honor.

The Court: So the evidence here is part of the evidence in the case; yes.

Mr. Abbott: For all purposes?

The Court: Yes. For all purposes for which it is properly to be considered.

Anything further?

Mr. Nelson: Well, I don't quite understand the last statement. It cannot be put into the case from the standpoint of the Government's case against the school.

The Court: It cannot be put in there for the purpose of anything to the jury. It can't affect any of the issues submitted to the jury. I take it the purpose of it is to [71] buttress the record on the question of rental values.

Mr. Abbott: Yes, your Honor.

Mr. Nelson: We would so object to the testimony as against the School District then, your Honor, because we did not so understand. The testimony was only coming in as to the counterclaim.

The Court: You offered no evidence to the contrary in the trial. I don't understand he expressed any opinion he didn't express at the trial, in effect. He expressed a \$50 per month rental value for ground use; and during the course of the trial on

the main case, so-called, he said it didn't have any rental value, as I understand it. Is that correct? Is my recollection correct?

Mr. Abbott: I believe he said negligible.

The Court: In effect, none.

Mr. Nelson: I will also call the attention of the court that those dates were in 1952.

The Court: Why are you objecting? That is what I can't understand. If you will tell me——

Mr. Nelson: I didn't see why it could come into the principal case. Now the court has cleared up the point. I am satisfied.

The Court: Very well.

[Endorsed]: Filed May 19, 1955. [72]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages, numbered from 1 to 236, inclusive, contain the original Complaint; Amended Complaint; Answer of Defendant International Airports, Inc., to Amended Complaint; Order Denying Motion to Dismiss; Notice of Motion to Dismiss for Failure to State a Cause of Action; Minute Order of the Court dated January 19, 1953; Answer to Amended Complaint; Answer of Defendants Finn to Amended Complaint; Cross-Complaint, Charles C. Finn, Cross-

Complainant, United States of America, Cross-Defendant; Amendment to Cross-Complaint, Charles C. Finn, Cross-Complainant, United States of America, Cross-Defendant; Answer of Seaboard Surety Company; Motion to Dismiss Cross-Complaint; Minute Order of the Court dated August 26, 1954; Counterclaim; Cross-Complaint for Damages, Seaboard Surety Company, Cross-Complainants, George C. Finn and Charles C. Finn, Cross-Defendants; Minute Order of the Court dated October 11, 1954; Amendment to Answer of Defendant International Airports, Inc.; Special Verdict; Plaintiff's Supplemental Memorandum of Law; Stipulation of Disclaimer and for Judgment; Memorandum of Decision; Reply to Counterclaim; Notice of Motion to Apply Property of Judgment Debtors Toward Satisfaction of Judgment; Findings of Fact and Conclusions of Law; Judgment; Notice of Filing of Motions; Motion for New Trial; and Motion to Amend Findings of Fact, Conclusions of Law, and Judgment; Points and Authorities; Order Granting Motion of Defendant International Airports, Inc., to Apply Property of Judgment Debtors Toward Satisfaction of Judgment; Order Denying Motions of Plaintiff for New Trial and to Amend Findings of Fact, Conclusions of Law, and Judgment; Notice of Appeal From Order Denying Motions of Plaintiff for New Trial and to Amend Findings of Fact, Conclusions of Law, and Judgment; Notice of Appeal From Final Judgment; Designation of Record on Appeal; Statement of Points Upon Which Appellant In-

tends to Rely on Appeal, which, together with the original exhibits and Reporter's Transcript of Proceedings on November 9, 1953; August 23, 1954; August 26, 1954; October 12, 1954; October 14, 1954; October 15, 1954; October 18, 1954; October 27, 1954; October 28, 1954; October 29, 1954; November 2 and 3, 1954; November 4, 1954, and November 5, 1954, in fourteen volumes, transmitted herewith, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 20th day of May, A.D. 1955.

[Seal]

EDMUND L. SMITH,
Clerk;

By /s/ THEODORE HOCKE,
Chief Deputy.

[Title of District Court and Cause.]

NOTICE OF APPEAL FROM FINAL JUDGMENT

Notice is hereby given that the Vineland Elementary School District of Kern County, one of the defendants herein, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final Judgment entered in this action on February 8, 1955.

Dated: May 26, 1955.

ROY GARGANO,
County Counsel;

By /s/ KIT L. NELSON,
Assistant County Counsel, Attorneys for Defendant
Vineland Elementary School District.

Affidavit of service by mail attached.

[Endorsed]: Filed May 27, 1955. [2*]

[Title of District Court and Cause.]

ORDER FOR EXTENSION OF TIME TO FILE
RECORD AND DOCKET APPEAL

On motion of defendant Vineland Elementary School District, appellant herein, It Is Ordered that the time within which the said defendant and appellant may file the record and docket the appeal herein shall be, and hereby is, extended to and including the 12th day of July, 1955.

Dated this 5th of July, 1955.

/s/ LEON R. YANKWICH,
United States District Judge.

Affidavit of service by mail attached.

[Endorsed]: Filed July 5, 1955. [4]

[Title of District Court and Cause.]

STATEMENT BY APPELLANT OF POINTS
ON WHICH IT INTENDS TO RELY

To the Clerk of the United States District Court
for the Southern District of California, Central
Division:

I.

Pursuant to Rule 75(d) of the Federal Rules of Civil Procedure, Appellant submits the following concise statement of points upon which he intends to rely on appeal:

A. The District Court erred in failing to rule that the sale of the aircraft in suit by the defendant School District to defendants Finn was illegal and void.

B. The District Court erred in failing to rule that the agreement between defendants Finn and defendant School District of February 28, 1951, (Vineland's Exhibit B), a Bill of Sale signed by Peter A. Bancroft in favor of defendants Finn concerning the aircraft in suit, dated February 28, 1951, (Finns' Exhibit K-4,) and any other agreements and instruments [6] concerning the sale of the aircraft in suit by defendant School District to defendants Finn, were illegal and void.

C. The District Court erred in failing to adjudge rescission:

1. Of the sale of the aircraft in suit by the defendant School District to the defendants Finn;

2. Of that certain agreement, dated February 28, 1951, by and between School District and defendants Finn (Vineland's Exhibit B); and

3. Of that certain bill of sale, signed by Peter A. Bancroft in favor of defendants Finn, dated February 28, 1951, (Finn's Exhibit K-4); and to adjudge the School District had full right, title and interest and right to possession of the aircraft in suit on the following grounds:

(a) The consent of defendant School District to said sale, agreement and bill of sale was obtained through misrepresentation on the part of the defendants Finn.

(b) Through the fault of defendants Finn, the consideration for the subject sale, agreement and bill of sale, and any and all agreements and instruments in connection therewith, have failed, in whole and in part.

(c) Through the fault of defendants Finn, the consideration for said subject sale, agreement and bill of sale, and any and all agreements and instruments in connection therewith, has become entirely void.

(d) Through the fault of defendants Finn, the consideration for the subject sale, agreement and bill of sale, and any and all agreements and instruments in connection therewith, has failed in a material respect.

(e) Defendants Finn have repudiated the contract for sale of the aircraft in suit and have manifested their inability to perform their obligations thereunder and have committed a material breach thereof. [7]

(f) The public interest would be prejudiced by permitting the subject sale, and any and all agreements and instruments in connection therewith, to stand.

D. The District Court erred in failing to rule that the agreement by and between the defendant School District and defendants Finn, dated February 28, 1951 (Vineland's Exhibit B), was a conditional sales contract, and that a condition or conditions hereof had been breached by defendants Finn, and to adjudge defendant School District has the right of possession to the aircraft in suit and full right, title and interest thereto.

E. The District Court erred in failing to rule that in accordance with the agreement by and between the defendant School District and defendants Finn, dated February 28, 1951 (Vineland's Exhibit B), right, title, and interest to the aircraft in suit did not pass to defendants Finn until all conditions of said agreement should be performed by defendants Finn, and particularly the provision requiring waivers and consent of the United States Government and its agencies to the said sale; and not in adjudging that said conditions had not been performed and that, therefore, the defendant School Dis-

trict was entitled to immediate possession of the aircraft in suit, and was the owner of all right, title and interest thereto.

Dated: July 8, 1955.

ROY GARGANO,
County Counsel;

By /s/ KIT L. NELSON,
Assistant County Counsel, Attorneys for Appellant
Vineland Elementary School District.

Affidavit of service by mail attached.

[Endorsed]: Filed July 11, 1955. [8]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 11, inclusive, contain the original:

Notice of appeal from Final Judgment;

Order for Extension of Time to File Record
and Docket Appeal;

Statement by Appellant of Points on which
it Intends to Rely;

Designation of Record;

constitute the transcript of record on appeal to
the United States Court of Appeals for the Ninth
Circuit.

I further certify that my fees for preparing the foregoing record amount to \$1.60, which sum has been paid by appellant.

Witness my hand and the seal of said District Court, this 29th day of July, 1955.

[Seal]

JOHN A. CHILDRESS,
Clerk.

/s/ CHARLES E. JONES,
Deputy.

[Endorsed]: No. 14770. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. George C. Finn, Charles C. Finn, International Airports, Inc., a Corporation: Peter A. Bancroft and Vineland Elementary School District of Kern County, Appellees, and Vineland Elementary School District of Kern County, California, Appellant, vs. United States of America, George C. Finn, Charles C. Finn, International Airports, Inc., Appellees. Transcript of Record. Appeals from the United States District Court for the Southern District of California, Central Division.

Filed May 23, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14770

UNITED STATES OF AMERICA,

Appellant,

vs.

GEORGE C. FINN, CHARLES C. FINN, INTERNATIONAL AIRPORTS, INC.; PETER A. BANCROFT, VINELAND ELEMENTARY SCHOOL DISTRICT OF KERN COUNTY,

Appellees.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY (RULE 17(6), RULES, COURT OF APPEALS, NINTH CIRCUIT)

The United States of America, appellant, states that the points on which it intends to rely in the above-captioned appeal are as follows:

1. The District Court erred in ruling that the provisions concerning certain uses of aeronautical property contained in Section 8304.11(b), 32 C.F.R. 1946 Supp., are contrary to the provisions and objectives of the Surplus Property Act of 1944 (58 Stat. 766, 50 U.S.C. App. Sec. 1611) and are invalid.

2. The District Court erred in ruling that the provisions concerning the use and sale of aeronauti-

cal property contained in the Form 65 Agreement (Plaintiff's Exhibit 1) are contrary to the provisions and objectives of the Surplus Property Act of 1944 (50 Stat. 766, 50 U.S.C. App. Sec. 1611) and are invalid.

3. The District Court erred in ruling that the provisions concerning the use and sale of aeronautical property contained in the Form 65 Agreement (Plaintiff's Exhibit 1) are contradictory to those contained in Sec. 8304.11(b), 32 C.F.R. 1946 Supp., and are invalid.

4. The District Court erred in failing to rule that the defendants, and each of them, are estopped to challenge the validity of Sec. 8304.11(b), 32 C.F.R. 1946 Supp., and of the Form 65 Agreement (Plaintiff's Exhibit 1).

5. The District Court erred in failing to rule that questions of validity of the Form 65 Agreement (Plaintiff's Exhibit 1) are immaterial by reason of rendition by plaintiff of the consideration to be furnished by it pursuant to said instrument.

6. The District Court erred in failing to rule that plaintiff had title to and the right to possession of the aircraft in suit at all times from February 28, 1951, to the date of Judgment, and in failing to rule that no defendant had the power to make any transfer or hypothecation of said aircraft.

7. The District Court erred in failing to rule that whatever interest was acquired by the defendant Vineland Elementary School District in or to

the aircraft in suit was subject to a trust for educational uses.

8. The District Court erred in ruling that the War Assets Administration transferred to the defendant Vineland Elementary School District full ownership, both legal and equitable, in and to the aircraft in suit.

9. The District Court erred in ruling that the defendant Vineland Elementary School District sold and transferred and delivered to defendants George C. Finn and Charles C. Finn all of its right, title and interest in and to the aircraft in suit.

10. The District Court erred in failing to find that at all times pertinent to this action, and particularly during the period from July 25, 1946, to the date of Judgment, the aircraft in suit was fit for use by a tax-supported institution for non-flight instructional purposes, has never been "scrap," and has never been "rendered unfit and useless except for its basic material content" within the meaning of the "Agreement" (Plaintiff's Exhibit 1).

11. The District Court erred in failing to award damages in favor of plaintiff and against all defendants for loss of use of the aircraft in suit from February 28, 1951, through September 18, 1952, and from January 18, 1953, through February 1, 1953.

12. The District Court erred in failing to grant specific performance of the Form 65 Agreement (Plaintiff's Exhibit 1).

13. The District Court erred in failing to enjoin future violations of the terms and conditions of the Form 65 Agreement (Plaintiff's Exhibit 1) on the part of each of the defendants.

14. The District Court erred in failing to award damages in favor of plaintiff and against defendant Vineland Elementary School District for breach of the Form 65 Agreement (Plaintiff's Exhibit 1).

15. The District Court erred in failing to award damages to plaintiff and against the defendants George C. Finn and Charles C. Finn for inducing a breach of the Form 65 Agreement (Plaintiff's Exhibit 1).

16. The District Court erred in ruling that it had jurisdiction with respect to the Counterclaim of the defendants George C. Finn and Charles C. Finn.

17. The District Court erred in ruling that it had jurisdiction to grant affirmative relief on the Counterclaim of the defendants George C. Finn and Charles C. Finn.

18. The District Court Court erred in granting relief on the Counterclaim of the defendants Finn because the Counterclaimants did not comply with Title 28, Section 2406, United States Code.

19. The District Court erred in refusing to make a finding with respect to right of possession as between all parties.

20. The District Court erred in failing to adju-

dedicate all claims to the aircraft in suit asserted by parties to this action.

21. The District Court erred in refusing to give effect to the proceedings, process and Judgment of the Superior Court of the State of California in and for the County of Los Angeles in *International Airports, Inc., v. Charles C. Finn, et al.*, Nos. 599,-895 and 600,291 (consolidated cases).

22. The District Court erred in ruling that as between plaintiff and all defendants the defendants Finn had the right to possession of the aircraft in suit on July 3, 1952, and at all times thereafter, and in awarding damages to the said defendants Finn on their Counterclaim for loss of use of said aircraft during said period, for the following reasons:

a. During the described period plaintiff had the right to possession of the aircraft in suit.

b. During the described period the defendant Vineland Elementary School District had a right to possession of the said aircraft superior to that of the defendants Finn.

c. During the period in question the defendant *International Airports, Inc.*, had a right to possession of the said aircraft superior to that of the defendants Finn.

23. The District Court erred in awarding damages for loss of use of the aircraft in suit for a period subsequent to the date of Judgment herein.

24. The District Court erred in awarding damages for loss of use of the aircraft in suit for a period subsequent to its Order Granting Motion of Defendant International Airports, Inc., to Apply Property of Judgment Debtors Toward Satisfaction of Judgment.

25. The District Court erred in finding the fair market value of the aircraft in suit on July 3, 1952, and on September 18, 1952, to be \$50,000, and in making an alternative award of said sum to the counterclaimants, for the following reasons:

a. The said Finding of Fact is clearly erroneous, is unsupported by the evidence, and is against the weight of the evidence.

b. The said finding of fair market value on September 18, 1952, was based upon the answer of the advisory jury to Interrogatory 20, which finding of the advisory jury:

1. Was made with respect to a different time and issue;

2. Appears to be the result of passion or prejudice induced by the misconduct of the counter-claimants.

3. Is clearly erroneous, unsupported by the evidence, and against the weight of the evidence.

26. The District Court erred in denying the Motions of plaintiff for New Trial and to Amend

Findings of Fact, Conclusions of Law, and Judgment.

Dated: May 31, 1955.

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,
Assistant United States Attorney, Chief of Civil
Division;

/s/ LOUIS LEE ABBOTT,
Assistant United States Attorney, Attorneys for
Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 2, 1955.

[Title of Court of Appeals and Cause.]

MOTION FOR CONSIDERATION OF
EXHIBITS IN ORIGINAL FORM AND
FOR OMISSION OF EXHIBITS FROM
PRINTED TRANSCRIPT OF RECORD

Comes Now the appellant, United States of America, and moves that the original exhibits transmitted by the Clerk of the United States District Court in this cause be considered by this Court in their original form, and that none of said original exhibits be included in the printed transcript of record except insofar as said exhibits have been incorporated by reference into the pleadings of the

parties. The original exhibits transmitted by the Clerk of the United States District Court are as follows:

Exhibits

Plaintiff's Exhibits: 1, 2, 4, 5, 6, 7, 9, 10, 12, 13, 14, 15, 17, 18, 19.

Defendant Vineland's Exhibits: A, B, C, D, E, F, G.

Defendant International's Exhibits: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U-1 through U-5.

Defendants' Finn Exhibits: B, E, K-1 through K-22, L, S, X, A-X.

Said Motion is made upon the following grounds:

1. The exhibits in this cause are voluminous. To print each of said exhibits in its entirety would be impracticable and expensive.

2. Certain documents basic to the claims of the litigants have been incorporated by reference into their pleadings and will therefore be included in the printed transcript of record. The designations of those documents in the pleadings of the parties and in the District Court record are as follows:

Document: Agreement dated June 25, 1946.

Designation in Pleadings: Complaint, Exhibit A.

District Court Exhibit Designation: Plaintiff's Exhibit 1.

Document: Agreement dated August 31, 1951.

Designation in Pleadings: Answer of Defendant International Airports, Inc., to Amended Complaint, Exhibit A.

District Court Exhibit Designation Defendant International's Exhibit E.

Document: Aircraft Chattel Mortgage, dated August 31, 1951.

Designation in Pleadings: Answer of Defendant International Airports' Inc., to Amended Complaint, Exhibit B.

District Court Exhibit Designation Defendant International's Exhibit B.

Document: Notice for Bids, dated January 6, 1951.

Designation in Pleadings: Answer to Amended Complaint for Declaratory Relief, Breach of Contract and Claim and Delivery (Defendants Vineland Elementary School District and Peter A. Bancroft) Exhibit A.

District Court Exhibit Designation: Defendant Vineland's Exhibit A.

Document: Agreement dated February 28, 1951.

Designation in Pleadings: Answer to Amended Complaint for Declaratory Relief, Breach of Contract and Claim and Delivery (Defendants Vineland Elementary School District and Peter A. Bancroft) Exhibit B.

District Court Exhibit Designation: Defendant Vineland's Exhibit B.

Dated: May 31, 1955.

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,
Assistant United States Attorney, Chief of Civil
Division;

/s/ LOUIS LEE ABBOTT,
Assistant United States Attorney, Attorneys for
Appellant.

Points and Authorities

Rule 76 (1) (o), Federal Rules of Civil Procedure.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 2, 1955.